

United States
Court of Appeals
for the Ninth Circuit

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Appellant,

vs.

MRS. DOROTHY WARD GINOCCHIO,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Nevada

FILED

JUN 2 1949

PAUL P. O'BRIEN,

CLERK

No. 12234

United States
Court of Appeals
for the Ninth Circuit

TIGHE E. WOODS, Housing Expediter, Office of
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

SIDNEY FEINBERG, ESQ.,

T. G. FITZGERALD, ESQ.,

J. GREGORY DONOHUE, ESQ.,

Office of the Housing Expediter,
180 New Montgomery Street, Room 300,
San Francisco 5, California,

For the Appellant.

EMERSON J. WILSON, ESQ.,

123 West 1st Street,
Reno, Nevada,

For the Appellee.

In the District Court of the United States
For the District of Nevada

No. 675

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Plaintiff,

vs.

MRS. DOROTHY WARD GINOCCHIO,

Defendant.

COMPLAINT FOR RESTITUTION
AND INJUNCTION

1. In the judgment of the Housing Expediter, the defendant engaged in actions and practices which constitute a violation of Section 206(a) of the Housing and Rent Act of 1947, (hereinafter called the Act).

2. Jurisdiction of this action is conferred upon this Court by Section 206(b) of the Act.

3. At all times mentioned herein, defendant was the landlord of and rented certain housing accommodations located at 415 East 8th Street, Reno, Nevada.

4. Since July 1, 1947, there has been in full force and effect pursuant to the Act, the Rent Regulation under the Housing and Rent Act of 1947 (12 F.R. 4331), hereinafter called the Regulation, establishing maximum rentals for the use and occupancy of housing accommodations within the defense rental area in which the premises referred to in Paragraph 3 above are located.

5. On December 12, 1947, the Rent Director for

the defense rental area having jurisdiction over the area in which the above-mentioned premises are located, issued an order reducing the maximum rental of the above-described [1*] accommodations and making such reduction effective as of August 1, 1947, and directing the defendant to refund to the tenant within thirty (30) days after issuance of the order, any rent received by the defendant in excess of the maximum legal rent fixed by the order.

6. The amount of rent demanded and received from the tenant by the defendant between August 1, 1947, and December 12, 1947, inclusive, in excess of the maximum rent fixed by the above-mentioned order was \$1,100.00, and the defendant violated the Regulation in that defendant failed and refused to refund to the tenant the said \$1,100.00 or any part thereof within thirty (30) days after the issuance of the order, as required by the order, as appears more fully on Schedule "A" attached hereto.

Wherefore, the Housing Expediter demands:

1. A permanent injunction enjoining the defendant, her attorneys, agents and employees, and all persons in active concert or participation with the defendant from directly or indirectly demanding or receiving rents in excess of the maximum rents established by any regulation or order heretofore or hereafter adopted, pursuant to the Housing and Rent Act of 1947, as heretofore or hereafter amended, or extended, or superseded.

2. That an order issue ordering the defendant to tender to the following named person the following

* Page numbering appearing at foot of page of original certified Transcript of Record.

sum, said sum being the amount by which the rent demanded and received by the defendant from said person as rent for the use and occupancy of housing accommodations exceeded the maximum rentals established by the Regulation:

Mathew S. Weiser, \$1,100.00.

Dated January 20, 1948.

/s/ SIDNEY FEINBERG,
Chief, Rent Litigation Unit,

/s/ T. G. FITZGERALD,
Attorney, Rent Litigation Unit,
Attorneys for Plaintiff. [2]

EXHIBIT "A"

Schedule

Tenant: Mathew S. Weiser.

Unit: House at 415 East 8th St., Reno, Nevada.

Date Rented: 8-1-47 to 12-31-47.

Rent Collected: \$250.00 per month.

Maximum Legal Rent: \$180.00 per month.

Number of Overcharges: 5.

Amount of Each Overcharge: \$70.00 per month.

Overcharge to Each Tenant: \$350.00.

Defendant demanded and received and retains the sum of \$750.00 from her tenant as a bonus, security deposit or prepayment of rent in violation of the regulations.

Total amount refundable to tenant: \$1,100.00.

[Endorsed]: Filed Jan. 24, 1948.

[Title of District Court and Cause.]

SUMMONS

To the above-named Defendant:

You are hereby summoned and required to serve upon Sidney Feinberg and T. G. Fitzgerald plaintiff's attorneys, whose address is: Office of Rent Control, O.H.E., Rent Litigation Unit, 1355 Market Street, Room 903, San Francisco 3, California, an answer to the complaint which is herewith served upon you, within 20 days after the service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

(Seal) /s/ AMOS C. DICKEY,
 Clerk of Court.

By /s/ DAN MURPHY,
 Deputy Clerk.

Date: January 24, 1948. [4]

RETURN ON SERVICE OF WRIT

United States of America,
District of Nevada—ss.

I hereby certify and return that I served the annexed summons on the therein-named Mrs. Dorothy Ward Ginocchio served on Mr. Joe Ginocchio (husband) account Dorothy Ward Ginnocchio avoided service by handing to and leaving a true and correct copy together with copy of Complaint for Restitution

and Injunction with Mr. Joe Ginocchio, personally, at Reno, Nevada, in said District on the 31st day of January, 1948.

EDWARD M. RANSON,
U.S. Marshal.

By /s/ ROSCOE P. DUNCAN,
Deputy.

[Endorsed]: Filed Feb. 3, 1948.

[Title of District Court and Cause.]

MOTION

Comes now the defendant, by and through her attorney, Chas. L. Richards, and moves to dismiss the within cause on the following grounds, to-wit:

That the Complaint fails to state a claim upon which relief shall be granted, together with the following additional grounds:

(a) That it does not appear on the face of the Complaint who the tenant, or tenants, receiving the housing accommodations was, or were.

(b) That it does not appear on the face of the Complaint who is entitled to receive the overcharge, if any, alleged in the Complaint and Schedule attached thereto.

(c) That the plaintiff (Housing Expediter) shows no interest in the litigation other than a request for a possible right to an injunction.

(d) That there is no showing on the face of the Complaint that the premises in question are located in any area properly designated as a defense rental area. [5]

(e) That it does not appear on the face of the Complaint that the premises in question fall within the Act Definition "Controlled Housing Accommodations" as defined in Act and Regulation sued upon.

(f) That the Schedule (Exhibit "A") annexed to the Complaint fails to justify the amount claimed.

(g) That to pay Matthew S. Weiser \$1,100.00, as per the prayer in the Complaint, would not settle all rights involved, because he is not the only tenant according to the terms of the lease given covering the premises involved.

(h) That the "Housing Accommodations" involved herein are not known as 415 East 8th Street, Reno, Nevada, but known as 415½ East 8th Street, Reno, Nevada.

/s/ CHAS. L. RICHARDS,
Attorney for Defendant.

[Endorsed]: Filed Feb. 19, 1948. [6]

[Title of District Court and Cause.]

ORDER DENYING DEFENDANT'S MOTION
TO DISMISS

A motion to dismiss complaint in the above-entitled action having been filed and the same having come on for hearing on April 20, 1948, in the above-entitled Court, Honorable Roger T. Foley, Judge Presiding, Fausta Kukuritis, attorney appearing for plaintiff, and Charles L. Richards, attorney appearing for defendant, and the same having been argued by aforementioned counsel and the Court being advised in the premises,

It Is Hereby Ordered that the Motion to Dismiss heretofore entered by defendant is hereby denied and the defendant is given twenty (20) days from the 20th day of April, 1948, within which to serve and file the Answer to the complaint on file herein.

Dated this 23rd day of April, 1948.

/s/ ROGER T. FOLEY,

Judge of the United States District Court.

Approved as to form:

/s/ CHARLES L. RICHARDS,

Attorney for Defendant.

[Endorsed]: Filed April 23, 1948. [7]

[Title of District Court and Cause.]

ANSWER

Comes now the above-named defendant and in answer to plaintiff's Complaint for Restitution and Injunction, admits, denies and alleges as follows:

1.

Denies that defendant engaged in action and practices which constitute a violation of Section 206(a) of the Housing and Rent Act of 1947, notwithstanding the judgment of the Housing Expediter to the contrary.

2.

Admits the allegations contained in paragraph 2 thereof.

3.

Admits the allegations contained in paragraph 3 thereof, but alleges in connection therewith an addi-

tional housing unit of number 415 $\frac{1}{2}$ East 8th Street, Reno, Nevada.

4.

Admits the allegations contained in paragraph 4 thereof.

5.

Admits the allegations contained in paragraph 5 thereof. [8]

6.

Admits the allegations contained in paragraph 6 thereof, but defendant further alleges that her failure and refusal to refund to the defendant the said \$1,100.00 within thirty days after the issuance of said order, as required by the order, as appears more fully in Schedule "A" attached to plaintiff's Complaint herein, were due to the fact that she honestly believed that the Rent Expediter of the Reno rent area had exceeded his powers under the Act of 1947, due to the decontrolled feature of the rental accommodation in question which took it without his jurisdiction.

Wherefore, the defendant demands:

1. That the action be dismissed, refusing the permanent injunction requested therein against defendant, enjoining defendant, her attorneys, agents and employees from directly or indirectly demanding or receiving rents in excess of the maximum rents established by any regulation or order heretofore or hereafter adopted pursuant to the Housing and Rent Act of 1947, as amended, extended or superseded.

2. That the request that an order issue ordering the defendant to tender to Matthew S. Weiser the sum of \$1,100.00 as rent received by defendant from

said Weiser for the use and occupancy of housing accommodations exceeding the maximum rentals established by the regulations, be denied.

3. That an order issue to the effect that the housing accommodations in question and under consideration be adjudged as decontrolled in character, under the Housing and Rent Act of 1947.

4. That the lease entered into by and between Matthew S. Weiser and Helen A. Weiser, his wife, dated July 30, 1947, with the defendant herein, be declared valid and in full force and effect, and that the said Matthew S. Weiser and [9] Helen A. Weiser be ordered to comply with the terms and conditions provided therein.

5. That the defendant have any costs in connection with said proceeding that might be just and proper.

/s/ CHAS. L. RICHARDS,
Attorney for Defendant.

[Endorsed]: Filed May 10, 1948. [10]

[Title of District Court and Cause.]

PLAINTIFF'S REQUEST FOR ADMISSIONS

Pursuant to the provisions of Rule 36, as amended, of the Federal Rules of Civil Procedure, plaintiff requests defendant, Mrs. Dorothy Ward Ginocchio, within ten days from the service hereof, to admit the genuineness of the documents described and exhibited herewith, and to admit the truth of the following relevant matters of fact, for the purpose of this ac-

tion only, and subject to all pertinent objections to admissibility which may be interposed at trial:

1. That by Order issued September 9, 1947, a true and correct copy of which Order is hereto attached and marked Exhibit "A", the Area Rent Director made his determination that the housing accommodations described in said Order were not decontrolled under the Housing and Rent Act of 1947.

2. That during the period August 1, 1947, to December 31, 1947, as fixed by Order of the Area Rent Director, dated [11] December 12, 1947, effective August 1, 1947, a true and correct copy of which Order is hereto attached and marked Exhibit "B", the prescribed maximum rent for the housing accommodations located within the Reno Defense-Rental Area, and formerly described as 415 and 415½ East Eighth Street, Reno, Nevada, now being described as 415 East Eighth Street, Reno, Nevada, was the sum of One Hundred Eighty Dollars (\$180.00), per month.

3. That during the period August 1, 1947, to December 31, 1947, the defendant herein, Mrs. Dorothy Ward Ginocchio, demanded or received of the tenant, Matthew S. Weiser, the sum of Eleven Hundred Dollars (\$1,100.00) as the consideration demanded or received by said defendant in connection with the use or occupancy by said tenant of the housing accommodations known or described as 415 East Eighth Street, Reno, Nevada.

Dated May 17, 1948.

/s/ SIDNEY FEINBERG,
/s/ J. GREGORY DONOHUE,
Attorneys for Plaintiff. [12]

EXHIBIT "A"

United States of America
Office of the Housing Expediter
Office of Rent Control

Stamp of Issuing Office: Office of Rent Control
O.H.E., 131 West Second Street, Reno, Nevada.

ORDER REJECTING DECONTROL REPORT

Concerning (Address of Accommodations): 415 $\frac{1}{2}$
East 8th St., Reno, Nevada. Apartment No.: House.
Docket No. 8-RE-DC-33.

To: (Name and Address of Landlord): Joe H.
Ginocchio, 1668 Oak Glen, Reno, Nevada.

To: (Name and Address of Tenant): M. S. Weiser,
415 $\frac{1}{2}$ E. 8th St., Reno, Nevada.

After due consideration of Form D-94 (Report of
Decontrol) and all available evidence, the Rent Direc-
tor has determined that the above described unit or
units do not qualify for decontrol under Section
202(c) of the Housing and Rent Act of 1947, for the
reason checked [] below:

[X] The unit is not a newly constructed dwelling
unit, the construction of which was completed
on or after February 1, 1947.

[X] The unit is not a conversion completed on or
after February 1, 1947.

[] The unit was not in existence on February 1,
1945.

[X] The unit was rented to other than a member

of the immediate family of the occupant between February 1, 1945, and January 31, 1947.

The maximum rent for the above housing accommodations remains unless changed by order, \$. (Mo. []; Wk. []) and any rent collected in excess of this amount must be refunded to the tenant.

Date September 9, 1947.

/s/ C. W.,

Rent Director. [13]

EXHIBIT "B"

(Corrected Copy.)

United States of America
Office of Housing Expediter

Stamp of Issuing Office: Office of Rent Control
O.H.E., 131 West Second Street, Reno, Nevada.

Concerning (Address of accommodations): 415
East 8th St., Reno, Nevada.

To: (Name and address of landlord): Mrs. Dorothy Ginocchio, 1668 Oak Glen Dr., Reno, Nevada.

Docket No. S-RE-1974.

The Rent Director, after consideration of all the evidence in this matter, has determined that the maximum rent for the above-described accommodations should be adjusted on the grounds stated in Sections 5(a)(1), 5(a)(3) of the Rent Regulations.

Therefore, it is ordered that the maximum rent for the above-described housing accommodations be, and it hereby is, changed from \$55.00 per month to \$180.00 per month.

This order issued December 12, 1947, and is effective on the date checked below:

From August 1, 1947.

This order will remain in effect until changed by the Office of the Housing Expediter.

/s/ C. W.,

Rent Director.

To: (Name and Address of Tenant):

Mrs. M. S. Weiser, 415 East 8th St., Reno, Nevada.

M. S. Weiser, LaSalle Hotel, Reno, Nevada.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed May 19, 1948. [14]

[Title of District Court and Cause.]

DEFENDANT'S ADMISSIONS

Comes now the above-named defendant and complying with Plaintiff's Request for Admissions filed herein, does admit the truth of the following relevant matter of fact:

1. Admits the truth of the statement contained in paragraph 1.

2. Admits the truth of the statement contained in paragraph 2.

3. Denies the truth of the statement contained in paragraph 3, but admits the following facts relative to rent received by defendant herein, during the period August 1, 1947, to December 31, 1947:

Defendant received Two Hundred Fifty Dollars (\$250.00) for the month of August, 1947;

Defendant received Two Hundred Fifty Dollars (\$250.00) for the month of September, 1947;

Defendant received Two Hundred Fifty Dollars (\$250.00) for the month of October, 1947;

making the total amount received by said defendant during said period Seven Hundred Fifty Dollars (\$750.00).

4. That the order adjusting maximum rent, made on December 12, 1947, fixing same at One Hundred Eighty Dollars (\$180.00) per month, was Seventy Dollars (\$70.00) per month [16] less than the rental fixed by lease on said premises; that defendant had accepted three (3) months' rent carrying said excessive amount \$70.00 per month), or a total of Two Hundred Ten Dollars (\$210.00) during said period.

5. That defendant herein further states that she has not received any further payment of rental on said premises from January 1, 1948, to date.

Respectfully submitted,

/s/ CHAS. L. RICHARDS,
Attorney for Defendant.

Dated: Reno, Nevada, May 21, 1948.

[Endorsed]: Filed May 22, 1948. [17]

[Title of District Court and Cause.]

ORDER OF PRE-TRIAL CONFERENCE

It Is Hereby Ordered:

That Miss Fausta Kukuritis, 1355 Market St., San Francisco 3, Calif., Attorney for plaintiff in the above-entitled action, and that Charles L. Richards, Esq., Waldorf Bldg., Reno, Nevada, Attorney for defendant in the above-entitled action, appear before the Court at 3:00 o'clock p.m. on the 15th day of June, A.D. 1948, at the courtroom of the above-entitled Court in the Post Office Building at Carson City, Nev., for a conference to consider with reference to the above-entitled action:

1. The simplification of the issues;
2. The necessity or desirability of amendments to the pleadings;
3. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
4. The limitation of the number of expert witnesses;
5. The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by a jury;
6. Such other matters as may aid in the disposition of the action.

Such pre-trial conference is hereby called pur-

suant to Rule 16 Federal Rules of Civil Procedure.

Dated: This 7th day of June, A.D. 1948.

/s/ ROGER T. FOLEY,
United States District Judge.

[Endorsed]: Filed June 7, 1948. [18]

[Title of District Court and Cause.]

ORDER ON PRE-TRIAL CONFERENCE

Pursuant to the Order heretofore made, the Pre-Trial Conference in the above-entitled action was held at Carson City, Nevada, at 3:00 p.m. on June 15th, 1948, Miss Fausta Kukuritis of the Office of the Housing Expediter appearing for plaintiff, and Charles L. Richards, Esq., appearing for defendant,

It Is Hereby Ordered that the action taken at such Pre-Trial Conference is as follows:

Paragraphs I, II, III, IV and V of the Complaint are admitted.

As to Paragraphs VI of the Complaint:

Defendant admits that she received \$250.00 for the month of August, 1947, as rent for the said premises; defendant admits that she received \$250.00 for the month of September, 1947, as rent for the said premises; defendant admits that she received \$250.00 for the month of October, 1947, as rent for the said premises; making the total amount received by the said defendant during said period, 8/1/47 to 12/31/47, the sum of \$750.00.

Defendant admits the allegations contained in Paragraph VI thereof, but defendant further al-

leges that her failure and refusal to refund to the defendant the said \$1,100.00 within thirty days after the issuance of said order, [19] as required by the order, as appears more fully in Schedule "A" attached to plaintiff's Complaint herein, were due to the fact that she honestly believed that the Rent Expediter of the Reno rent area had exceeded his powers under the Act of 1947, due to the decontrolled feature of the rental accommodation in question, to-wit, guest house, which took it without his jurisdiction.

Plaintiff contends that the tenant named in the Schedule attached to the plaintiff's Complaint, Matthew S. Weiser, paid to the defendant as rental for said premises the sum of \$2,000.00 for the term beginning August 1, 1947, and ending December 31, 1947, and in support of such contention the plaintiff offers in evidence four cancelled vouchers marked as plaintiff's Exhibit 1, said cancelled vouchers total the sum of \$2,000.00.

Plaintiff further contends that the legal maximum rent for the premises at 415 East 8th Street, Reno, Nevada, is \$180.00 per month effective from August 1, 1947, pursuant to order of Area Rent Director issued December 12, 1947.

This case is set for trial before the Court without a jury at Carson City, Nevada, on Tuesday, December 14, 1948, at 10:00 a.m.

Dated: This 6th day of July, 1948.

/s/ ROGER T. FOLEY,
United States District Judge.

[Endorsed]: Filed July 6, 1948. [20]

[Title of District Court and Cause.]

WITHDRAWAL OF ATTORNEY

I hereby withdraw as counsel for the defendant, Mrs. Dorothy Ward Ginocchio, in the above-entitled action, the same to take effect immediately.

Respectfully submitted,

/s/ CHAS. L. RICHARDS.

Carbon Copies Sent to the Defendant—Reno, Nevada. Miss Kukuritis—Atty. for Plaintiff. Mr. Emerson J. Wilson, Reno, Nevada.

[Endorsed]: Filed Nov. 12, 1948. [21]

[Title of District Court and Cause.]

COPY OF CIVIL DOCKET ENTRY OF
JANUARY 20, 1949

Jan. 20, 1949: Entering Judgment. Judgment. The Court finds, and it is ordered that on and after February 1, 1947, additional housing accommodations were created by conversion; and that the premises in question are not subject to control under the statute. It Is Ordered that the prayer of plaintiff's complaint asking for a permanent injunction and for a refund of \$1100.00 to the tenant is denied.

Jan. 20, 1949: Counsel advised as to entry of Judgment.

.....

A true copy from the records. Attest:

(Seal)

AMOS P. DICKEY,

Clerk,

By /s/ J. P. FODRIN,

Deputy. [22]

In the District Court of the United States
for the District of Nevada

No. 675

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Plaintiff,

vs.

MRS. DOROTHY WARD GINOCCHIO,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECREE

This Cause having heretofore on the 19th day of January, 1949, come on regularly to be heard before the above-entitled Court, sitting without a jury; the plaintiff appearing by his counsel, J. Gregory Donohue, Esq.; the defendant appearing in person, and by her counsel, Emerson J. Wilson, Esq., and certain evidence being adduced by plaintiff and defendant, the case was submitted to the Court for decision.

Wherefore, upon said last-named day, all the law and the evidence being considered, the Court rendered its decision in favor of the defendant and against the plaintiff, and ordered that Findings of Fact, Conclusions of Law and Decree be drawn in accordance therewith.

Wherefore, by reason of the premises, the Court here makes its certain Findings of Fact and draws its Conclusions of Law as follows:

FINDINGS OF FACT

The Court finds as matter of fact,

1. That at all times mentioned in plaintiff's complaint [23] defendant was the owner of certain housing accommodations located at 415 East 8th Street, Reno, Nevada.

2. That on or about July 30, 1947, defendant leased the housing accommodations at 415 East 8th Street, Reno, Nevada, to Matthew S. Weiser and Helen A. Weiser:

3. That defendant duly filed with Office of Rent Control, Reno, Nevada, application for decontrol of said housing accommodations at 415 East 8th Street, Reno, Nevada.

4. That said application for decontrol of said premises was denied September 9, 1947, by the Reno, Nevada, Area Rent Office;

5. That defendant filed petition with Reno Rent Advisory Board seeking recommendation of that Board relative to decontrol of said premises, pursuant to suggestions of the Reno Area Rent Office;

6. That the Reno Rent Advisory Board on November 25, 1947, approved the action of the Reno Area Rent Office refusing the application of defendant for decontrol of said premises;

7. That on December 20, 1947, defendant forwarded a copy of the petition filed with Reno Rent Advisory Board to the Regional Rent Administrator pursuant to request by Regional Rent Administrator for review by the Regional Rent Administrator;

8. That this action was filed January 24, 1948;

9. That the Regional Rent Administrator on February 10, 1948, made his finding that the proceedings with respect to decontrol of said premises were handled by the Area Rent Office in accordance with the Rent Regulations and an interpretation of the Rent Regulations by the Regional Rent attorney;

10. That the construction of the housing accommodations leased by defendant to Matthew S. Weiser and Helen A. Weiser, in July, 1947, was completed after February 1, 1947;

11. That the housing accommodations leased by defendant to Matthew S. Weiser and Helen A. Weiser in July, 1947, are additional [24] accommodations created subsequent to February 1, 1947.

CONCLUSIONS OF LAW

The Court concludes as matter of fact,

1. That defendant did not fail to pursue the administrative remedies available to her prior to the commencement of this action.

2. That the housing accommodations at 415 East 8th Street, Reno, Nevada, leased by defendant to Matthew S. Weiser and Helen A. Weiser were not controlled housing accommodations.

DECREE

Now, Therefore, by reason of the premises and in conformity with the Findings of Fact and Conclusions of Law,

It Is Hereby Ordered, Adjudged and Decreed as follows:

1. That the housing accommodations belonging to

defendant at No. 415 East 8th Street, Reno, Nevada, were not at any time subsequent to August 1, 1947, and are not now, controlled housing accommodations under the provisions of the Housing and Rent Act of 1947 (Public Law 129-80th Congress, Chapter 163 1st Session);

2. That the application for a permanent injunction enjoining the defendant, her attorneys, agents and employers, and all persons in active concert or participation with the defendant from directly or indirectly demanding or receiving rents in excess of the maximum rent established by order of the Rent Director of the Reno Rental area be and the same is hereby denied;

3. That the application for an order requiring defendant to tender to Matthew S. Weiser, the sum of \$1100.00 be, and the same is, hereby denied.

Done in Open Court this 10th day of February, 1949.

/s/ ROGER T. FOLEY,
District Judge.

[Endorsed]: Filed Feb. 10, 1949. [25]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, the Plaintiff in the above-entitled action, pursuant to the provisions of Rule 73, as amended, of the Federal Rules of Civil Procedure, files this, the within Notice of Appeal to the

United States Court of Appeals for the Ninth Circuit, appealing from the Judgment or Decree of the Court heretofore entered, on or about the 10th day of February, 1949, in the above-entitled cause.

Dated this 30th day of March, 1949.

/s/ SIDNEY FEINBERG,

/s/ J. GREGORY DONOHUE,

Attorneys for Appellant, Tighe E. Woods, Housing Expediter, Office of the Housing Expediter.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 1, 1949. [26]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, the Appellant in the above-entitled action, files this, his Designation of Contents of Record on Appeal, and designates as such record the entire and complete record and all the proceedings and evidence in said cause, including any and all exhibits of either of the parties offered, introduced or admitted into evidence in said cause.

Dated this 30th day of March, 1949.

/s/ SIDNEY FEINBERG,

/s/ J. GREGORY DONOHUE,

Attorneys for Appellant, Tighe E. Woods, Housing Expediter, Office of the Housing Expediter.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 1, 1949. [28]

[Title of District Court and Cause.]

STATEMENT OF POINTS

Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, the Appellant in the above-entitled cause, states the following points on which he intends to rely on appeal:

1. The Court below erred in denying the Plaintiff's application for injunction as prayed for in the Complaint.

2. The Court below erred in denying restitution of alleged rental overcharges to the tenant, Matthew S. Weiser.

3. The Court below erred in ordering, adjudging and decreeing that the housing accommodations belonging to defendant at 415 East 8th Street, Reno, Nevada, were not at any time subsequent to August 1, 1947, and are not now controlled housing accommodations under the provisions of the Housing and Rent Act of 1947 (Public Law 129, 80th Congress, Chapter 163, 1st Session).

4. The Court below erred in finding as a fact that the housing accommodations leased by defendant to Matthew S. Weiser and Helen A. Weiser in July, 1947, are additional accommodations created subsequent to February 1, 1947. [30]

5. The Court below erred in concluding as a matter of law that defendant did not fail to pursue the administrative remedies available to her prior to the commencement of this action.

6. The Court below erred in concluding as a matter of law that the housing accommodations at 415

East 8th Street, Reno, Nevada, leased by defendant to Matthew S. Weiser and Helen A. Weiser were not controlled housing accommodations.

7. The Court below erred in failing to hold that the afore-mentioned premises were controlled housing accommodations subject to the Housing and Rent Act of 1947, as amended.

8. The Court below erred in failing to grant judgment in favor of plaintiff and against defendant.

Dated this 30th day of March, 1949.

/s/ SIDNEY FEINBERG,

/s/ J. GREGORY DONOHUE,

Attorney for Appellant, Tighe E. Woods, Housing Expediter, Office of the Housing Expediter.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 1, 1949. [31]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR APPEAL

Upon Application of the Plaintiff herein and upon a showing of excusable neglect based on the failure of the Plaintiff to learn of the entry of judgment in the above-entitled action, due to the following facts:

The judgment was entered by the Clerk immediately upon oral rendition from the bench. Counsel for the prevailing party, the defendant, was requested to prepare and submit findings of fact and

conclusions of law. That said findings of fact and conclusions of law were signed by the Judge on the 10th day of February, 1949, and on that day filed with the Clerk of the Court. Counsel for the plaintiff has computed the time allowed for the taking of an appeal to be sixty (60) days from the signing and filing of said findings of fact and conclusions of law.

It Is Hereby Ordered that the time for appeal herein be, and the same hereby is, extended for a period not exceeding thirty (30) days from the expiration of the original time for appeal prescribed in Rule 73(a) as amended, of the Federal Rules of Civil Procedure.

Dated: This 8th day of April, A.D. 1949.

/s/ ROGER T. FOLEY,
United States District Judge.

[Endorsed]: Filed April 8, 1949. [33]

[Title of District Court and Cause.]

AMENDED NOTICE OF APPEAL

Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, the Plaintiff in the above-entitled action, pursuant to the provisions of Rule 73, as amended, of the Federal Rules of Civil Procedure, files this, the within Amended Notice of Appeal to the United States Court of Appeals for the

Ninth Circuit, appealing from the final Judgment or Decree of the Court heretofore entered herein.

Dated this 5th day of April, 1949.

/s/ SIDNEY FEINBERG,

/s/ J. GREGORY DONOHUE,

Attorneys for Appellant, Tighe E. Woods, Housing Expediter, Office of the Housing Expediter.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 8, 1949. [34]

[Title of District Court and Cause.]

AMENDED DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, the Appellant in the above-entitled action, files this, his Amended Designation of Contents of Record on Appeal, and designates as such record the entire and complete record and all the proceedings and evidence in said cause, including any and all exhibits of either of the parties offered, introduced or admitted into evidence in said cause.

Dated this 5th day of April, 1949.

/s/ SIDNEY FEINBERG,

/s/ J. GREGORY DONOHUE,

Attorneys for Appellant, Tighe E. Woods, Housing Expediter, Office of the Housing Expediter.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 8, 1949. [36]

[Title of District Court and Cause.]

AMENDED STATEMENT OF POINTS

Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, the Appellant in the above-entitled cause, states the following points in which he intends to rely on appeal:

1. The Court below erred in denying the Plaintiff's Application for injunction as prayed for in the Complaint.

2. The Court below erred in denying restitution of alleged rental overcharges to the tenant, Matthew S. Weiser.

3. The Court below erred in ordering, adjudging and decreeing that the housing accommodations belonging to defendant at 415 East 8th Street, Reno, Nevada, were not at any time subsequent to August 1, 1947, and are not now controlled housing accommodations under the provisions of the Housing and Rent Act of 1947 (Public Law 129, 80th Congress, Chapter 163, 1st Session).

4. The Court below erred in finding as a fact that the housing accommodations leased by defendant to Matthew S. Weiser and Helen A. Weiser in July, 1947, are additional accommodations created subsequent to February 1, 1947. [38]

5. The Court below erred in concluding as a matter of law that defendant did not fail to pursue the administrative remedies available to her prior to the commencement of this action.

6. The Court below erred in concluding as a matter of law that the housing accommodations at 415 East 8th Street, Reno, Nevada, leased by defendant to Matthew S. Weiser and Helen A. Weiser were not controlled housing accommodations.

7. The Court below erred in failing to hold that the afore-mentioned premises were controlled housing accommodations subject to the Housing and Rent Act of 1947, as amended.

8. The Court below erred in failing to grant judgment in favor of Plaintiff and against defendant.

Dated this 5th day of April, 1949.

/s/ SIDNEY FEINBERG,

/s/ J. GREGORY DONOHUE,

Attorneys for Appellant, Tighe E. Woods, Housing Expediter, Office of the Housing Expediter.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 8, 1949. [39]

In the District Court of the United States, in and
for the District of Nevada

No. 675

Before: Hon. Roger T. Foley, Judge.

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Plaintiff,

vs.

MRS. DOROTHY WARD GINOCCHIO,

Defendant.

TRIAL

Be It Remembered, That the above matter came
on regularly for trial before the Court without a
jury on Wednesday, the 19th of January, 1949, at
Carson City, Nevada.

Appearances: J. Gregory Donohue, Rent Litiga-
tion Attorney, Attorney for Plaintiff; Emerson J.
Wilson, Attorney for Defendant.

The following proceedings were had:

The Court: Case No. 675, Woods vs. Ginocchio,
are counsel ready to proceed?

Mr. Donohue: Plaintiff is ready.

Mr. Wilson: Defendant is ready. Let the record
show that Emerson J. Wilson represents the defend-
ant in this matter.

The Court: Mr. Richards represented the de-
fendant heretofore. [70] Is there a withdrawal on
file?

Mr. Wilson: Yes, there is a withdrawal on file,
your Honor.

The Court: We had a pre-trial conference in this case and defendant has admitted the receipt of rent during the period of August 1, 1947, to December 3, 1947, in the sum of \$750.00 and then alleges defense or reason why she refused to make a refund in the sum of 1100, under the belief that the rent expediter had exceeded his powers under the act of 1947, due to the decontrol feature of the rental accommodations in question, to-wit, guest house, which took it without his jurisdiction. Plaintiff contends that the tenant named in the schedule attached to the plaintiff's complaint, Matthew S. Weiser, paid to the defendant as rental for said premises the sum of \$2,000.00 for the term beginning August 1, 1947, and ending December 31, 1947, and in support of such contention the plaintiff offers in evidence four cancelled vouchers marked as plaintiff's Exhibit 1, said cancelled vouchers total the sum of \$2,000.00. So there is a question of law to be taken care of, isn't there, the question of whether or not the rent expediter exceeded his powers as contended by the defendant. I don't quite understand the two paragraphs of this order, referring to Paragraph VI of the complaint—the first paragraph where it is acknowledged that the total amount of rent received [71] during the same period was \$750.00 and the second paragraph on page 2 of the order, where plaintiff Weiser paid to the defendant as rental for said premises the sum of \$2,000.00.

Mr. Donohue: I believe the defendant's contention is based upon the fact that while, as is

evidenced by the vouchers, the sum of two thousand dollars was paid, I believe it is the defendant's contention that the rental was not paid for those particular months but that it was paid in advance for, I believe, a two-year lease executed here, paid for the last five months, or some months towards the latter part of the lease. In that connection, of course, it is our contention that the regulations prohibited the demand or receipt of any rent in excess of the maximum except the next period of rental in advance, that it was security deposit collected in violation of the regulation and therefore should be refunded. That will probably explain that discrepancy there.

Mr. Wilson: If the Court please, in order perhaps to more clearly define the issues, the payment of the \$2,000.00 is certainly admitted.

The Court: That is admitted on the part of the plaintiff?

Mr. Wilson: On the part of the defendant, too, payment of the money. There is no question about that, the money was paid. The money was paid by virtue of a lease and the monthly [72] rental in the lease was \$250 per month, to be paid in advance, and that was paid at the execution of the lease, the last five months of the term. As to that there will be no controversy. Now the contention of the defendant is that the housing expediter exceeded his authority and jurisdiction and went beyond the scope of his power in determining a rent ceiling for this particular property. Now our contention is that as a matter of fact this housing ac-

commodation covered by this lease is not a controlled housing accommodation, for two reasons. First, there is the question of fact to be determined as to whether or not this housing accommodation is a new housing accommodation that was not rented prior to the critical date of February 1, 1947, and, of course, in this connection I assume that the government will contend that this was an old housing accommodation with substantial capital improvements. That is a question of fact to be determined there. Secondly, we contend that this housing accommodation is not a controlled accommodation, by reason of the fact that it is an entire structure, wherein 25 or less rooms are rented by a lessee—Weiser being the lessee under the lease—of the entire structure or premises. Well, that raises the further question under the proviso of the regulation—and it is our contention that all of the housing accommodations, each and every of the housing accommodations within this structure that is the subject of the lease, were exempt from rental control, [73] either under the provisions of the regulation—that would be Section 1-B of the rent regulation—or under the provision of the act. Now the provision of the rent regulation 1B provides that:

“Rooms, the structure of which were completed on or after February 1, 1947, or which are additional accommodations created by conversion on or after February 1, 1947, and rooms which at any time during the period of February 1, 1945, to January 31, 1947, were rented either as individual rooms or as part of a larger housing accommoda-

tion other than to members of the immediate family of the occupant * * *."

Those are the two reasons which we claim exempt this housing accommodation that was the subject of the lease from control by the expediter. Now, of course, that raises a question of fact and secondly a question of the application of the law to the question of fact.

The Court: The question of fact, as I gather from your remarks, is whether or not this housing accommodation was constructed after February 1, 1947, or was—what was that?

Mr. Wilson: Whether each of the rooms within the accommodation or within the structure were either rooms created after February 1, 1947, or had been occupied only by the owner and the owner's family. [74]

Mr. Donohue: If I may interject a thought here. Prior to the question of facts being resolved, I think there is, as your Honor suggested a moment ago, a question of law to be resolved. I think the plaintiff's evidence will show that the application for decontrol on these premises was made to the Area Rent Director, which application was rejected by the Area Rent Director. The act under which the accommodations in question are governed provides for the issuance of certain rules and regulations consistent with the purpose of the act to be issued by the housing expediter, including the issuance of particular orders. The regulations which are authorized to be issued under that section provide for administration and reviews of determina-

tion by the rent director, by the regional administrator and by the national administrator. The rent director in the instant case, upon application for decontrol made by the land lord for the housing accommodations involved in this case, issued an order denying the application for decontrol. The act also sets up a rent advisory board. After the issuance of the order made by the rent director, denying the application for decontrol, the defendant applied to the rent advisory board. There also, while that board only acts in an advisory capacity to the rent director, the application for decontrol was likewise denied. The rent regulation, procedure regulation, provides upon rejection of application for order of decontrol that the owner then has the right to appeal to the [75] regional administrator. It further provides for direct protest to the national administrator. In the instant case none of those remedies have been sought. It is our position, as a matter of law, in order to be permitted to raise those questions in this court, while this court ultimately would have the jurisdiction to consider those matters, I think the rule is well settled that a person has first to exhaust his administrative remedies.

The Court: Let us stop right there a moment. Now we start with an application on behalf of the defendant for an order of decontrol and that was denied.

Mr. Donohue: By the rent director.

The Court: And then something in the nature of appeal was taken to the regional director.

Mr. Donohue: No, that was not done. They applied to the rent advisory board, which is a local board in the area, at which time they had a hearing on the matter and the board concluded that they were not entitled to decontrol. In support of that contention, your Honor, I would like to call your Honor's attention to the case of *Gates vs. Wood*, which is reported in 169 Fed. (2), page 440. It is the 4th Circuit Court of Appeals. The action there was a defensive action by the housing expediter, in which the landlord had sought injunction to restrain the enforcement of an order issued by the rent director. The court stated: [76]

"To sanction such procedure on their part would cut the heart out of administrative action and lead to chaos in the courts."

It further stated:

"The housing Expediter is expressly empowered to issue regulations and orders to adjust maximum rents and to determine which housing accommodations in a defense-rental area are 'controlled' and which are excluded by Sec. 202(c) of the Act from the term 'controlled housing accommodations.'"

"The rule is well settled that a person must first exhaust the prescribed administrative remedy before he can seek any relief in the courts."

The Court: What section of the act is 202(c)?

Mr. Donohue: That would be 50 USC Appendix, Section 1881-1902. It is in 50 USCA Appendix to the Housing Act of 1947.

The Court: Mr. Wilson, are you familiar with this case?

Mr. Wilson: To a certain extent, your Honor.

The Court: It looks as though it settles the question.

Mr. Wilson: This particular case you have reference to, yes, I am familiar with that case. At least, I am familiar with the rule that administrative remedy must be exhausted [77] before the trial court has jurisdiction.

The Court: It seems as though the situation is somewhat to the point here. Syllabus No. 1 reads:

“Where owners of housing accommodations, remodeled into two apartments, failed to pursue their administrative remedies to review orders of Area Rent Director fixing maximum rent for each of the apartments as provided in rent procedure regulation, owners were barred from seeking injunctive relief against enforcement of maximum rent orders.”

Syllabus No. 2:

“A person must first exhaust prescribed administrative remedy before he can seek any relief from the courts.”

Doesn't that settle this question?

Mr. Wilson: I am not satisfied it does, your Honor.

The Court: Let us see where we start. We start with an order—I want to see if I understand the facts here correctly—we start with an order of the Area Rent Director refusing to recognize the prem-

ises in question as not within the purview of the regulation. That was the order, wasn't it?

Mr. Wilson: That is right.

The Court: And the administrative procedures, were [78] they exhausted, that is the next question.

Mr. Wilson: That is the question, were the administrative procedures exhausted. Now I have endeavored to ascertain whether they were or were not by reference to the rent procedure regulation. I requested the advice and help of Mr. Wemkin in that respect and asked him if administrative procedure had been exhausted and he informed me in his opinion it had. I know any conversation with Mr. Wemkin does not bind the rent controller or anything of that kind, but it is my understanding from these procedure regulations that the method of appeal is alternative and that it is possible—I would like to go through this with Mr. Donohue and find out just these two alternative methods of the review of administrative process.

Mr. Donohue: First I would like to say this. I have here a letter dated January 2, 1948, in which the former counsel for Mrs. Ginocchio was advised of the procedure which she could follow to file an application for review. That letter is dated January 2, 1948. Our records would indicate that in response to that question no action has proceeded beyond the order of the Area Rent Director. The letter is addressed to Mr. Richards by the Regional Rent Administrator and reads:

“This will acknowledge receipt of your letter of December 20, 1947, addressed to Mr. Cox, and at-

taching a complaint concerning the [79] rejection by the Reno Defense-Rental Area of Application for Decontrol filed by the landlord. "We note that this complaint was addressed to the Reno Rent Advisory Board.

"We do not find sufficient facts stated in the complaint to be able to determine whether or not the action of the area rent office was correct. We are writing to the area office today for a report and as soon as we receive their reply we will communicate with you further.

"For your information, Rent Procedural Regulation 1 sets for the procedure for filing appeal from decision of the area rent director. We attach a copy hereto and call your attention to Section 840.23 providing for filing of an Application for Review to be conducted by the Regional Rent Administrator. Form D9 for that purpose may be obtained in the area rent office.

"Subpart B, Section 840.25, sets forth the procedure for filing an appeal with our Washington office."

In response to that letter, no appeal was ever filed. Now that is where our records indicate the matter.

Mr. Wilson: Under these regulations, Mr. Donohue, we had, as I gather, 60 days for review, 60 days within which [80] to apply for review.

The Court: Which regulations are you referring to now, Mr. Wilson?

Mr. Wilson: I am referring to Rent Procedural Regulation 1, September 4, 1947. That is the name

of the document. Now the order from the Area Rent Advisory Board denying the defendant's petition is dated November 25, 1947. This action, so far as I am aware, was filed on January 24, 1948. I guess that would be 60 days, although this date of the order, I doubt very much if it was communicated within that period of time. It would appear that this action was probably filed on the 60th day after the entry of the order denying the petition. Now under Section 840.23 of the Rent Procedural Regulation, "application for review may be filed within 60 days after the issuance of the determination to be reviewed or within 30 days after the date of issuance of the order."

Mr. Donohue: Counsel, may I correct one impression I think is erroneous. As I originally stated, powers of the Board are merely advisory. The actual order rejecting decontrol was issued on September 9, 1947. After the Rent Advisory Board had advised the landlord that in their opinion they didn't think the accommodations were decontrolled, they then wrote this letter to the regional office, at which time the regional office advised them of the procedural requirements [81] for filing of review and I might state, with reference to the 60 days, it is not a limitation within which an application will be filed if there is any reasonable excuse for waiting beyond the period. In other words, if there is any merit to the application, even though the 60 days has expired in actual handling of the application for review.

Mr. Wilson: That was January 2nd your re-

gional office wrote the original letter to Mr. Richards and here we have order of Mr. Wemkin September 9th, we have the order of the Advisory Board on November 25th, the letter from your regional office on January 2nd and the filing of the complaint on January 24th. Your procedure contemplates the appeal to the Advisory Board, does it not? I find these regulations very confusing.

Mr. Donohue: No, as I stated, the powers of the Board were merely advisory. I think that was a big issue in the last Congress, whether they should be a board which would have the power to administer the act, or whether they were advisory, and I think Congress concluded if they were given absolute power it would perhaps be unconstitutional and therefore they were merely advisory. The landlord had the choice if he wanted to have official action either by the rent director or the advisory board. They are both local.

Mr. Wilson: Of course, we have this situation—we have the rent advisory board created subsequent to the order of [82] September 9th. There is correspondence in the file here that indicates that Mr. Richards requested a hearing before the Rent Advisory Board and there is correspondence indicating that the Rent Advisory Board was not created until immediately preceding this hearing, at which the defendant presented her application to the board. On September 19th, letter from Mr. Wemkin to Mr. Richards:

“In answer to your letter of September 17th:

“The Rent Control Board for the Reno area

is still incomplete. Governor Pittman made his recommendations to Mr. Creedon, and the appointments were made. However, two members, Mr. Stevens and Mr. Morgali, declined to serve on the Board.

“As soon as new appointments are made, and the Board is organized, I will advise you so that you may present your case to them.”

Then October 22nd, this from Mr. Wemkin to Mr. Richards:

“This is to advise you the Reno Rent Advisory board was organized last night, and Mr. Russell Mills was chosen as permanent chairman. The next meeting of the Board will be held Tuesday, October 28th, at 7:30 p.m. in the Area Rent Office, 131 West Second St.

“The Board last night adopted a resolution [83] that all matters presented to them must be in the form of a written complaint signed by the plaintiff. This complaint will have no particular form, but should set forth all facts relative to the case.

“If you will prepare Mrs. Ginocchio’s complaint and address it to the Reno Rent Advisory Board, Box 821, Reno, Nev., it will be considered at this meeting.

“Very truly yours,

“CHARLES WEMKEN,
“Area Rent Director.”

That complaint was apparently prepared. Now

here is November 10, 1947, to Mr. Charles L. Richards:

"This is to notify you that the next meeting of the Rent Advisory Board will be held in the Reno office of Rent Control, 131 West Second St., Thursday, November 13th, at 7 p.m.

"You and your client, Mrs. Ginocchio, may be present at that time to present such facts as you deem pertinent in this case.

"Very truly yours,

"CHARLES WEMKEN,
"Area Rent Director."

Now we come down to February 10th and we have letter from the Regional Rent Examiner to Mr. Richards:

"This is in further reference to our letter to [84] you dated January 2, 1948.

"Upon investigation, we find that the proceedings in the area rent office were handled in accordance with the Rent Regulations and an interpretation of the regulation by the Regional Rent Attorney.

"As suit has now been filed, decision in this case rests with the court.

"Yours very truly,

"WARD COX,
"Regional Rent Administrator."

I find in letter addressed to Mr. Cox by Mr. Richards, this is December 20th:

"I am writing you on behalf of my client, Mrs.

Ginocchio, re the above subject matter. She has requested that I do so as a result of a conversation between you over the phone, wherein you requested a copy of my Complaint together with 'points' and 'citations' presented to the Office of Rent Control in Reno.

"You will have herewith copy requested.

"Hoping it meets with your satisfaction. Should you need any further service from me I shall be pleased to make an effort that will in any way bring about some semblance of justice as to the present situation. [85]

"Awaiting any word at any time, I remain, * * *"

Mr. Donohue: I might say to the court in the Gates vs. Woods case it went further on to say:

"The rule as to the exhaustion of administrative remedies applies just as forcibly when, as here, the contention is made that the administrative agency lacked jurisdiction over the subject matter."

We do not contend there is no jurisdiction in this court to determine whether these accommodations are covered by the act. We merely say that in the instant case that rule as to exhausting administrative remedies applies and administrative remedies have not been availed of in the instant case and that to approve that issue in this court, as the court said in the Gates case, would render chaos in the courts.

The Court: Now in this decision, Mr. Wilson—I am not speaking with the idea of deciding any question, but just at the present time to call your attention to some of this language here to see if

it would clear us up any. In this case the court says that:

“Section 204(b) of the Act provides that ‘the Housing Expediter shall, by regulation or order, make such adjustments in such maximum rents as may be necessary to correct inequities * * *,’ and Section 204(d) authorized the Housing Expediter to issue such regulations and orders as he deems necessary to carry out the policy in rent control enunciated by Congress in the Act.”

Now that would be the basis of authority for orders in this case.

Mr. Wilson: Yes, your Honor.

The Court (Continues reading):

“Accordingly, the Housing Expediter has laid down in the Controlled Housing Rent Regulation an elaborate set of rules for rent increases, adjustments and other determinations. Furthermore, in Rent Procedural Regulation 1 (12 F.R. 916, 5923) an orderly, simple and efficient procedure is prescribed for the Office of Rent Control, Office of the Housing Expediter, in making the various kinds of determinations in connection with establishment of maximum rents.”

See if that is in the procedure that governs the present situation: “an orderly, simple and efficient procedure is prescribed * * *.” Now, it seems to me in *Gates v. Woods* it deals with the same questions of orders and regulations we are concerned with in this case.

Mr. Wilson: Yes, I have read this case and I have read the United States Supreme Court case

cited therein as authority for the rule and that aspect of this case perturbed [87] me greatly when I first received this file from Mr. Richards and I at once made inquiry as to whether or not these administrative procedures had been followed and——

The Court: Do you mind if I interrupt again?

Mr. Wilson: No, please go ahead.

The Court: Now what have we here in this case in the way of application for orders and orders and applications for review? For instance, there was no doubt a registration of this case, wasn't there, a rent registration?

Mr. Donohue: There was an application for decontrol and then a somewhat inconsistent action on the part of the landlord. They then filed a registration in one instance, making application for decontrol without subjecting themselves to the rent.

The Court: We might confine ourselves to the application for decontrol at present. There was an application for decontrol?

Mr. Donohue: Yes, your Honor.

The Court: Then the order of the area rent director, Mr. Wemken, denying that application. Now there was no appeal then, was there, to the regional rent administrator and from there to the housing expediter?

Mr. Donohue: No, your Honor.

Mr. Wilson: The only thing that might be considered to be such remedy, there was application to the area rent advisory [88] board. That application and hearing, etc., between the rent advisory

board and Mr. Richards and Mrs. Ginocchio occupied the time between September 9th and November 25th. Then on December 20th, in response to the request from Mr. Ward Cox, the regional rent controller, Mr. Richards forwarded his complaint and that document is entitled——

The Court: Before we go any further than that, Mr. Wilson, wouldn't it be well to find out from the regulations and from the statute the powers and duties and jurisdiction of this rent advisory board?

Mr. Donohue: I might say that that particular thing is covered in Section 204(e).

The Court: That would be what section of this housing rent act of 1947?

Mr. Donohue: I do not have the cross reference. It would be about the second section.

The Court: It is Section 1893 of Title 50 Appendix.

Mr. Donohue: The function, if I might state, your Honor, of the advisory board was more or less a general one to determine decontrol of the entire rent areas, to consider general adequacy of the rent level. It made no attempt to administer nor was it empowered to—it could not have been empowered and be constitutional—to actually perform the functions of rent control. The power was vested in the area rent director. [89]

The Court: There might be a question here as to whether or not this defendant was somewhat misled by this correspondence and referred this matter to this advisory board. There was adverse

action by this advisory board. I mean, there was action against the defendant.

Mr. Donohue: That is correct.

The Court: And when was that order?

Mr. Donohue: They were notified by letter dated November 25th.

The Court: Was there any provision for any appeal from that?

Mr. Donohue: There being, as I say, no power lodged in the board to make a positive decision, there was no appeal.

The Court: The question before the advisory board then was not an order refusing the decontrol these premises. It was a question of consideration by that board whether or not they recommend to the administrator that his former order be revoked or rescinded?

Mr. Donohue: Yes.

Mr. Wilson: Had something of that sort been the recommendation and there had been a provision, or let us say the recommendation, to modify the order, then there would have been action to be taken by the area rent office, but there wasn't. It was a confirmation that had theretofore been taken by the rent office and I would be inclined to construe [90] this as being the termination of the proceedings before the area rent office, that is the office in Reno. Now we find that on December 20th a copy of the proceedings and complaint, etc., that was presented to the area rent office advisory board was then sent to the regional office. Now strictly speaking, it isn't designated as appeal or

anything of that kind, but the subject matter of the complaint, I would say, was sufficient to present a matter to the regional area director. Then we find that on——

Mr. Donohue: Just a moment, counsel. As pointed out in the letter of January 2nd, it is noted that the complaint is addressed to the Reno Rent Advisory Board and was merely a copy of the complaint which was considered by the Rent Advisory Board.

Mr. Wilson: Well, subsequent to that time, and after the filing of this action, Mr. Cox, through his office, advises Mr. Richards that: “* * * Upon investigation, we find that the proceedings in the area rent office were handled in accordance with the Rent Regulations and an interpretation of the regulation by the Regional Rent Attorney.” Now, true, it does not say that “your appeal is denied,” but it certainly shows that they had before them the record, they considered it and they found that the action of the area office was in accordance with the regulations and with the interpretation of the regional rent attorney. [91]

The Court: Now let us take your theory for a moment. I think I see what you are driving at. I see, too, where the submission of this question to the local advisory board was encouraged by the action of the office of housing expediter or his subordinates in this correspondence. Now let us assume then that they might be somewhat excused for failure to follow this regulation that would require appeal to the regional rent director and then from

there to the expediter. It is evident that the office of housing expediter or regional director or someone cooperated with the defendant in getting this matter before the local advisory board. What for? It could be that by that cooperation of the office of housing expediter or any of his subordinates, this defendant could have overlooked or could have been blinded as to these regulations or procedures fixed by the regulations for appeal of the order of the area rent director to the regional director and to the superior office. Now if you take that as being fact, then what was the date of this order of this local advisory board recommending that the original order of the local rent director stand? That was the order, wasn't it? The local advisory board gave no relief here. They sustained the order of the area rent director. Now that was in November——

Mr. Wilson: November 25th. [92]

The Court: Now then we are right back to where we started from. We have from that date an order of the rent director refusing to decontrol these premises. The time for appeal to the regional director should run from that date in fairness to this defendant, should run from the date that the local advisory board acted, because the action before the local advisory board was taken by the defendant with the help and assistance of the regional rent director or his superiors and they could have been lulled into a feeling of security, whereby they might not have taken advantage of their right to appeal to the regional director within

the time prescribed by the regulations. You see what I mean. Let us start from there. Consider that the order of the area rent director, refusing to decontrol, dates from the date of the order of the rental advisory board, which was November 25, 1947. Now from that date on there was a time for appeal under this regulation, and had the defendants taken advantage of their right to appeal since that time, they had a right to appeal, in my opinion. I think that they would have on account of the cooperation of this office of housing expediter with this procedure before this local advisory board. In other words, they were encouraged and helped by the office of housing expediter to present this matter to the local board and the local board confirmed, you [93] might say, the views of the area rent director. Then as far as we are concerned for beginning of the time for application of administrative remedies, we should consider beginning of that time as November 25, 1947. Now what would be the present rights of this defendant today under that situation?

Mr. Wilson: Well, now, let us take the next step, that apparently on December 20th there was a telephone conversation between Mr. Cox and Mr. Richards and Mr. Richards communicates with Mr. Cox and says: "Pursuant to our telephone conversation today, I am forwarding you a copy of my citations——"

The Court: Mr. Cox is the regional director?

Mr. Wilson: He is the man to whom this appeal would be directed.

The Court: On December 20th Mr. Richards informed him of sending him——

Mr. Wilson: The copy requested is the language used in this letter:

“I am writing you on behalf of my client, Mrs. Ginocchio, re the above subject matter. She has requested that I do so as a result of a conversation between you over the phone * * *”

Evidently that would be conversation between Mrs. Ginocchio and Mr. Cox:

“* * * wherein you requested a copy of my complaint [94] together with ‘points’ and ‘citations’ presented to the Office of Rent Control in Reno.

“You will have herewith copy requested.”

Now the copy is sent and on January 2, 1948, the regional office writes Mr. Richards:

“This will acknowledge receipt of your letter of December 20, 1947, addressed to Mr. Cox and attaching a complaint concerning the rejection by the Reno Defense-Rental Area of Application for Decontrol filed by the landlord.

“We note that this complaint was addressed to the Reno Rent Advisory Board.

“We do not find sufficient facts stated in the complaint to be able to determine whether or not the action of the area rent office was correct.”

The Court: Now stop there. Wouldn't it be only fair to the defendant to consider that the defendant had appealed to the regional director?

Mr. Wilson: All right. Now this next sentence I think will strengthen that:

“We are writing to the area office today for

a report and as soon as we receive their reply we will communicate with you further.

“For your information, Rent Procedural Regulation 1 sets forth the procedure for filing appeal from decision [95] of the area rent director. We attach a copy hereto and call your attention to Section 840.23 providing for filing of an Application for Review to be conducted by the Regional Rent Administrator.”

The Court: What is the date of that letter?

Mr. Wilson: This is January 2nd.

The Court: Now I would take it from that letter—I want to go along as we go over these, if you don't mind, see if we can all of us agree on the proper interpretation of this letter and the regulations. Now in view of that letter, calling the attention of the defendant in this case, Mrs. Ginocchio, to the regulation providing a means for an appeal, then this rent control, this regional director, did not treat this matter as an appeal, but gave the defendant notice of this regulation, so I would say that the opportunity to appeal to the rent director or to the regional director, the time within which that might be done, would run now from January 2, 1948.

Mr. Wilson: Yes, but in this same letter it says: “We are writing to the area office today for a report and as soon as we receive their reply we will communicate with you further,” indicating there would be something else from the regional office in the way of a further communication. Now the next communication that I find on this matter is Feb-

ruary [96] 10th. That is aside from the service of the complaint and summons in this matter, because on February 10th after this action is filed we have this letter:

“This is in further reference to our letter to you dated January 2, 1948.”

Now that is to say that this is the letter that we said that we would send later or communicate later, after receiving the record from the area rent office. This must be the one. It is the only one I could find:

“This is in further reference to our letter to you dated January 2, 1948.

“Upon investigation, we find that the proceedings in the area rent office were handled in accordance with the Rent Regulations and an interpretation of the regulation by the Regional Rent Attorney.

“As suit has now been filed, decision in this case rests with the court.”

The Court: That leaves the court in a very difficult place. This is a suggestion merely—it may be that we cannot consider that this defendant has failed to take advantage of administrative remedies. The correspondence with the regional rent director, he worked with the defendant in getting this matter before him and then after this case was filed, he decided the case against the defendant, to the same extent and with the same effect, I [97] believe, that a decision by him of the same nature would be made if they had come to him in the regular course of this regulation. Do I make myself clear?

Mr. Donohue: Assuming that is true——

The Court (Interrupting): Suppose in carrying out the procedure laid down by the regulations—the decision of the regional rent director in this case was made February 10th, 1948, and the suit was filed January 24, 1948, suit being filed then at a time when the defendant still had an administrative remedy—can the office of housing expediter cut this defendant off and deprive the defendant of recourse to administrative remedy by rushing into court before the time has elapsed for exercise of the remedy? Those are some of the questions presented to me. What do you think of that, Mr. Donohue? Why did this rent regional director, to use an ordinary expression, fool with this case until it was properly before him? He evidently did and he decided it, so if he decided it, he must base his decision upon the procedures. At least, he must have considered that the case was properly before him.

Mr. Donohue: Is there anything to preclude the exhaustion of administrative remedies, even after suit is filed?

The Court: Of course, you might have this thought, too. The regulations, as you said earlier, are advisory. If the housing expediter did not bring the suit or situation [98] could be foreseen where he did not bring suit in the same state of affairs that we have here before the time for the use of administrative procedures had passed, that limitation of the statute might occur. Is that possible?

Mr. Wilson: No, because this lease is dated the 30th day of July, 1947. The term commences on the first day of August, 1947. The limitation is a period of a year.

Mr. Donohue: The question goes a little deeper than that, I think. The question is that there is a properly constituted authority to determine these questions, procedures set up for review of those authorities. Ignoring those procedures, they proceeded in accordance with their own determination.

The Court: With the help and connivance of all officers of the housing expediter having to do with the case.

Mr. Donohue: It was an original order, stating that these accommodations are not decontrolled. During all these negotiations there is an order which has rejected the decontrol.

The Court: And then there is a confirmation of that order by the regional rent director February 10, 1948, and he can do no more than that. So what position does he leave these people in? Why didn't advice about that regulation procedure come at the moment that the local advisory board was referred to? [99]

Mr. Donohue: I do not know. Mr. Wemken is here. He might be in position to state whether or not this landlord was advised in the area office of her rights to appeal. Frankly I might state this is the procedure. Some landlord will choose to go to the rent advisory board and another landlord will choose to pursue those proper appeal remedies.

The Court: All right, let us stop there a mo-

ment. Suppose this landlord came into Mr. Wemken's office and had in mind this advisory board and wanted that board to pass on it. Now if it was a fact under the law time was running against an appeal to the regional rent director, which could have been flittered away by fooling around with this local advisory board, it was the duty of somebody to get this defendant on the right track. Now maybe it wasn't the duty. They were not required, perhaps, to go that far, but when they cooperate with the defendant and suggest the type of complaint to be filed with this local advisory board and all that, thereby permitting this time to run along, can the defendant, after the conclusion of action by the local advisory board then, after conclusion of the review authorized by the regulations or otherwise of the regional director, can this defendant be then said to have failed to exercise administrative acts? I do not think so.

Mr. Donohue: He had a direct appeal to the national [100] administrator. He had an appeal yet to the regional administrator.

The Court: This beginning of the time, in my judgment, would run from February 10, 1948, when the regional director announced his decision sustaining and approving of the order of the area rent director. Do you see the point I have in mind?

Mr. Donohue: I do, but I think that the rule as to exhaustion of administrative remedies is more or less a rule of thumb. As I say, the constituted authority to make these determinations is first of all the local director, with the help of the rent advisory

board, the regional office, the national office. It is a question of whether they are going to administer the provisions of the act or whether those provisions of the act are going to be administered by the courts. That is the purpose of the rule of exhaustion of administrative remedies. We do not maintain this court does not have any jurisdiction because certainly it has, but I think the rule of exhaustion of administrative remedies, even assuming up to the time the regional office said that in their opinion they thought it was in accordance with the regulations, that they had not exhausted their administrative remedies.

Mr. Wilson: I think this rule of exhaustion of administrative remedies is well considered and fully discussed in the United States Supreme Court report cited in this particular case.

The Court: Just a moment. It is claimed here now that the defendant has failed to exhaust administrative remedies. From the discussion we have had here and expressions made, I do not believe that the defendant could be held to have failed to have exhausted administrative remedies because I believe from February 10, 1948, when the regional director announced that the order of the area rent director was approved, that from that time on the time for taking appeal began to run, an appeal from the regional rent director to the housing expediter, and this suit was brought against the defendant when there was still time to appeal to the housing expediter. Now what position does that leave us in?

Mr. Wilson: I have no authority to cite to the court in that respect.

The Court: Doesn't that kind of perplex you, Mr. Donohue? Doesn't it amount to this, that this regional rent director has given a decision on the very subject matter that he would have decided if there had been an appeal perfected under the regulations and if he did, the time to appeal from his decision runs from the date he gave his decision. Now can you clear that matter up in my mind? So if it is urged here by the government that because the defendant has failed to exhaust his administrative [102] remedies that this court should not consider the legality of the order, now we are up against another proposition, and I think it will block the defendant right in his tracks. An order of the rent director or an order of any of these officials, made pursuant to regulations, can only be reviewed in the emergency court of appeals, can't it?

Mr. Donohue: That was true under the former act. The rule here I am urging is similar to that proposition. However, we do not contend there is no jurisdiction in the court to rule on the question of whether these premises are decontrolled or not decontrolled. Our position merely is that the court shouldn't do so where the defendant has failed to exhaust his prescribed administrative remedies.

The Court: If that point was suggested as objection to the proceeding, I am going to overrule the objection on the ground stated, because I do not believe this defendant can be held as having failed to have exhausted administrative remedies at the

time this suit was brought, because from February 10, 1948, the time began to run within which an appeal could be taken to the housing expediter. Now let us start from there.

Mr. Wilson: In order to keep the record straight with respect to this, is it the court's desire I introduce in evidence these various letters and documents, copies of which I [103] have?

The Court: I think it would be well to do so.

Mr. Donohue: To save time perhaps likewise may we stipulate that the orders in question, which we referred to, say for example the order rejecting the decontrol, which is the formal order, will be introduced?

Mr. Wilson: I certainly will be glad to stipulate as to the introduction of all those documents.

Mr. Donohue: The order adjusting the maximum rent for the premises to accompany the various letters which you refer to.

The Court: There never was any action after February 12th that could be considered as administrative procedure prescribed?

Mr. Wilson: None whatever.

Mr. Donohue: We will offer the order rejecting the decontrol report and order establishing the maximum rent.

The Court: That will be government's Exhibits 1 and 2 in that order.

Mr. Donohue: We will offer also the rent advisory board's letter which sustained the rent director in his determination.

The Court: Exhibit 1 is order rejecting decon-

trol report. Exhibit 2, order adjusting maximum rent, dated December 12, 1947. Suppose we take a recess now.

(Recess taken at 11:45 until 1:30 p.m.) [104]

Afternoon Session—1:30 p.m.

The Court: I wonder if it would be well to go over some of the matters that we discussed here this morning and see if we are on the right track. I had in mind that perhaps we could begin now as if no orders had been made of any kind in regard to whether or not the defendant had exhausted administrative remedies. I would like to kind of get the views of counsel as to what the situation is after all this discussion we have had. Now I think Mr. Donohue stated that the procedure in regard to the review of administrative orders of the emergency court of appeals has been changed. Now this action was brought after the termination of the emergency price control act, wasn't it?

Mr. Donohue: Yes, your Honor.

The Court: And the acts out of which this action grows were all had after the expiration of that act?

Mr. Donohue: That is correct.

The Court: They are not at all affected by what you might call the old law?

Mr. Donohue: That is correct.

The Court: They are entirely under this act called Housing and Rent Act Act of 1947?

Mr. Donohue: Yes.

The Court: Now I was looking at the case of Woods vs. Hills, Supreme Court of the United States case, decided [105] May 10, 1948, where orders were made—one order was made during the period of time of the operation of the emergency price control act and one was made subsequent to that time.

Mr. Donohue: I was on the brief in the Circuit Court of Appeals in that particular case. I believe appeal involved construction of 200(d) of the emergency price control act though the opinion was in 1948.

The Court: So that would have nothing to do with our present situation, would it?

Mr. Donohue: No, that was purely under the emergency price control act.

The Court: So what is your contention now, Mr. Donohue? Do you contend that the court now has or has not authority to consider the legality of the order rejecting the application for decontrol?

Mr. Donohue: The position that we are urging is that the defendant, having failed to exhaust his administrative remedies, should not be heard in this court in a suit brought to enforce compliance with the regulations and orders as issued, should not be heard in this court to raise a defense, that the order is improper, having failed to exhaust his administrative remedies and that jurisdiction which is conferred upon the court as to determination as to whether there has been a violation here, and would necessarily perhaps involve the question [106] of determination as to whether, in this court's decision,

it would grant the relief sought wouldn't necessarily follow by consideration of the equities of the particular situation, but the particular defense—in other words, the purpose as expressed there by the Circuit Court in the case of *Gates vs. Woods*, this statement, “it would cut the heart out of administrative action and lead to chaos in the courts.” The administrative agency is the properly constituted authority to determine and administer the act and regulations, where certain prescribed administrative remedies have been set forth, and those have not been followed. Now giving the court's credence to the fact that a review was probably had through the back door of the regional office, the prescribed administrative remedies nevertheless were merely half was exhausted in that event, assuming that there was a sort of, as I said, a back door review of the particular case, and our position is that merely that question should not be gone into in this court, because otherwise the court would be performing the function which is prescribed under the law that the housing expediter should administer. Whether they have exhausted all prescribed administrative remedies——

The Court (Interrupting): Just for information—it can't change any rule appearing here, but under the present circumstances, assume the defendant exhausts his remedies before the administrator, then would this court have jurisdiction? [107]

Mr. Donohue: Yes, I think it has, undoubtedly.

The Court: There is no such thing as hearing in emergency court of appeals any more?

Mr. Donohue: No, your Honor. The function is generally limited to board administration and when the recommendation is made by the advisory board to the administrator and he denies it, for example, for a general rent increase or a decontrol of an entire area, and the administrator fails to comply with the recommendation of the advisory board, the matter may then be presented to the emergency court of appeals.

The Court: The question involved in the application for decontrol and the question which the defendant would like to have the court consider now is the applicability of Section 1892 of the rent control act, is it not, where it defines different terms and the term "controlled housing accommodations" means housing accommodations in any defense rental area except that it does not include:

"(1) those housing accommodations, in any establishment which is commonly known as a hotel in the community in which it is located, which are occupied by persons who are provided customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of [108] furniture and fixtures, and bellboy services; or

"(2) any motor court, or any part thereof; any trailer or trailer space, or any part thereof; or any tourist home serving transient guests exclusive, or any part thereof; or

"(3) any housing accommodations (A) the construction of which was completed on or after February 1, 1947, or which are additional housing ac-

accommodations created by conversion on or after February 1, 1947, except that contracts for the rental of housing accommodations to veterans of World War II and their immediate families * * *"

Is that the burden of the contention, that the administrator's office, that the rent control order refusing to decontrol, if we might use that term, was illegal?

Mr. Wilson: Not justified by the statute, was beyond the scope of the authorization conferred upon the administrative body by the statute.

Mr. Donohue: In that connection, again referring to the language of *Gates vs. Woods*:

"The Housing Expediter is expressly empowered to issue regulations and orders to adjust maximum rents and to determine which housing accommodations in a defense-rental area are 'controlled' and which are excluded by Sec. [109] 202(c) * * *"

The Court: Section 202(c) of the act is what?

Mr. Donohue: The section you have just read.

(Continuing): "* * * of the Act from the term 'controlled housing accommodations.'

"The rule is well settled that a person must first exhaust the prescribed administrative remedy before he can seek any relief in the courts.

"The rule as to the exhaustion of administrative remedies applies just as forcibly when, as here, the contention is made that the administrative agency lacked jurisdiction over the subject matter."

That is exactly the contention which is raised here. I was reading from part of the court's opin-

ion which I have excerpt from in the case of *Gates vs. Woods*.

The Court: I have in mind—I can't get it out of my mind—the result of our discussion here this morning, that this defendant has in a sense cooperated with the area rent control director, submitted the matter to the advisory board, and then followed the instructions of the regional rent director, prepared a complaint and submitted it to the advisory board and subsequently, on February 10, 1948, the regional rent director made a decision. Now [110] you see this language we have here in this case, *Gates vs. Woods*, it points out a case that hasn't those elements that we have here. It goes on to say:

“The plaintiffs have not even attempted to avail themselves of these administrative remedies. They argue that the rent director has exceeded his jurisdiction and that a full investigation would have disclosed that the property in question was decontrolled. The plaintiffs, however, did nothing to bring the facts concerning the property to the attention of the rent director; rather they rushed into the State Court and sought an injunction to checkmate the Housing Expediter and his subordinates from carrying out the duties imposed upon them by the Act. To sanction such procedure on their part would cut the heart out of administrative action and lead to chaos in the courts.”

Do you notice the difference, Mr. Donohue?

Mr. Donohue: I realize that is a much stronger case.

The Court: There they disregarded all the offices

of the housing expediter, from the area rent control director all the way through and immediately rushed it to the State court, without any attempt to even consult the administrator. Now in this case here this defendant has [111] been at all times willing and has conferred with and sought the advice from the office of housing expediter and his assistance and has received a decision from the regional director on this point. That is true, isn't it?

Mr. Donohue: Yes, but the administrative process doesn't stop there.

The Court: I know. They did proceed, perhaps, wrongly as outlined by the applicable regulation, but it was a mutual fault there. It seems to me that if the housing expediter is going to take advantage of the failure to follow that regulation, which he evidently intends to do by insisting now that these people should be held as not having pursued administrative remedy, he should have at an earlier stage than this, instead of considering their case and going into the merits of it and giving them a hearing; in the meantime precious time under the regulation was passing. In am going to hold that administrative remedies have been exhausted, and I will do so under my views or the meaning of this case of *Gates vs. Woods*. I can easily see the court's thought in the case of *Gates vs. Woods*, where the plaintiffs in that case, in similar position as the defendants here, ignored the order of the rent director, they ignored the regional director, they ignored all of the officers of the housing experiter and threw it post-haste into the State court, to try to [112] prevent

the operation under the law and regulations of the housing expediter. Doesn't it strike you, Mr. Donohue, it wouldn't be just to say that this defendant should be considered as a person violated the regulations and the procedure outlined for relief from these orders?

Mr. Donohue: Of course throughout, right from the very beginning, these people were represented by capable counsel and when this order was issued rejecting the decontrol report on September 19th a letter written to Mr. Wemken by Mr. Richards——

The Court: Well, right there, I should think in a spirit of fairness that some member of the housing expediter would have told those people if they intend to seek any relief from that order that they had to pursue these administrative remedies.

Mr. Donohue: I do not want to urge this matter at any further length upon the court. I feel that they were fully advised throughout and this letter indicates he does not want to take up with the regional office or his local board. He apparently has been advised to proceed on appeal as indicated. I do not want to urge this point at too great length on the court. It appears to me this is burden which courts were not intended to carry. Now if the court wishes to take the time to decide—as a matter of fact, the problem involving this decontrol is probably a much greater problem than we have in deciding [113] whether he has exhausted administrative remedies.

The Court: It is a question of determining whether on February 1, 1947, if this housing accom-

modation was of a character not included by Section 1892.

Mr. Donohue: As I say, I do not want to urge this point any further upon the court if the court feels there has been sufficient——

The Court: I can't get away from the idea the regional director made a decision in this case on February 10, 1948. I think there is no dispute on it.

Mr. Donohue: I think they went in the back door.

The Court: It doesn't make any difference whether he handed it to him through the back door or the front door, he handed them a decision.

Mr. Donohue: There is no question about that.

The Court: And they had an opportunity then, of course, to petition or appeal to the office of housing expediter, didn't they?

Mr. Donohue: Yes.

The Court: But the action had already been brought, so I am going to hold now that the defendants in this case have not failed to follow the administrative procedures. I base that wholly upon my finding and the records and exhibits that Mr. Ward Cox, regional administrator, gave a decision sustaining the validity of the order rejecting decontrol [114] report on February 10, 1948, after the filing of this action January 24, 1948, and upon the further finding that several months prior to that time, with the cooperation and assistance of the officers of housing expediter, this defendant presented their objections to the order rejecting the decontrol report to the advisory board of this rental district,

that all of these steps were taken by the defendant with the full knowledge of the officers of the housing expediter and with their assistance and cooperation.

Mr. Donohue: We offer the following exhibits:

Ex. 1—Order rejecting decontrol report issued September 9, 1947.

[Printer's Note: Plaintiff's Exhibit No. 1 is set out in full at page 115 of this printed Record.]

Ex. 2—Order adjusting the maximum rent from \$55 to \$180 per month, issued December 12, 1947.

[Printer's Note: Plaintiff's Exhibit No. 2 is set out in full at page 118 of this printed Record.]

Ex. 3—Request for opportunity to present law to the rent advisory board. Letter dated September 17th of Mr. Richards to Mr. Wemken.

[Printer's Note: Plaintiff's Exhibit No. 3 is set out in full at page 119 of this printed Record.]

Ex. 4—Two registration statements for the premises described as 415 East 8th Street, Reno, Nevada.

Ex. 5—Order adjusting the maximum rent from \$55 to \$57.50, issued November 8, 1946.

[Printer's Note: Plaintiff's Exhibit No. 5 is set out in full at page 120 of this printed Record.]

Ex. 6—Letter of the rent advisory board to Mr.

and Mrs. Ginocchio, in which they recommended their filing a petition and agreed with the determination of the rent director that [115] accommodations were not decontrolled. The substance of it was they had not, in their opinion created additional housing accommodations and the proper procedure for them to follow would be to file a petition for adjusting with the regional rent director.

[Printer's Note: Plaintiff's Exhibit No. 6 is set out in full at page 121 of this printed Record.]

The Court: That amounts to rejecting their application.

Mr. Donohue: That the accommodations be decontrolled.

The Court: The effect of that is that they rejected the application of the defendants for decontrol.

Mr. Donohue: They went to the advisory board to have the advisory board make a recommendation to the rent director after presentation of their case to the rent advisory board and they advised the landlord they were recommending the accommodations be not decontrolled and recommended to him that they file a petition for adjustment.

Mr. Wilson: Defendant's Exhibit A is a letter of August 13, 1947, from Mr. Wemken to Mrs. Ginocchio, stating that Mr. Goldbaum, one of the regional rent attorneys advised that the proper procedure to be followed by Mrs. Ginocchio would be to file a petition for an adjustment in rent and re-

quested Mrs. Ginocchio to complete the enclosed forms and return them to his office.

[Printer's Note: Defendant's Exhibit A is set out in full at page 109 of this printed Record.]

Exhibit B, letter of September 19, 1947, Mr. Wemken to Mr. Richards, advising the rent control board is incomplete, [116] stating that as soon as the board is organized Mr. Richards will be notified so that he may present the case.

[Printer's Note: Defendant's Exhibit B was read into evidence at page 42 of this printed Record.]

Now Exhibit C is a letter October 22, 1947, Wemken to Richards, advising that the Reno advisory board has been organized and requesting that a written complaint be filed for the consideration of the Board on October 28th.

[Printer's Note: Defendant's Exhibit C was read into evidence at page 43 of this printed Record.]

Exhibit D is a letter of November 10, 1947, Wemken to Richards, advising that he may be present before the advisory board on November 13th and present pertinent facts.

[Printer's Note: Defendant's Exhibit D was read into evidence at page 44 of this printed Record.]

Exhibit E, letter of December 20, 1947, Mr. Richards to Mr. Cox, enclosing copy of the complaint

filed with the advisory board. That was pursuant to telephone conversation.

[Printer's Note: Defendant's Exhibit E was read into evidence at page 44 of this printed Record.]

Exhibit F is a letter of January 2, 1948, from Mr. Cox to Mr. Richards, advising that the regional office requested a report from the area office and promising further communication upon receipt of that report.

[Printer's Note: Defendant's Exhibit F was read into evidence at page 39 of this printed Record.]

Exhibit G, letter February 10th, Cox to Richards, upholding proceedings by the area office.

[Printer's Note: Defendant's Exhibit G was read into evidence at page 44 of this printed Record.]

Exhibit H is a tracing showing the plan of the accommodations numbered 415 E. 8th Street and referred to ingovernment's Exhibit 4, together with—

Mr. Donohue: May I interrupt just one moment. I think it might be well, for the purpose of the record, to state by whom it is made and what relationship, if any, to the defendant. [117]

Mr. Wilson: We will be glad to do it. Together with a floor plan of the premises known as 415½ East 8th Street, this plan having been prepared by William Ward, contractor, Reno, Nevada, the recently deceased father of the defendant.

Exhibit I is original tracing of the premises which are the subject of this litigation, prepared by the same individual.

Exhibit J is original tracing of the basement of the premises, the subject of this litigation, prepared by the same person.

Mr. Donohue: Counsel, with reference to that, may it also be stated it is not drawn at the same scale?

Mr. Wilson: It may be. These are a quarter inch scale. Exhibit K, the original lease dated July 30, 1947, between the defendant as lessor and Matthew S. Weiser and Helen A. Weiser, lessees.

Now, Mr. Donohue, may we stipulate that Exhibits H, I, J and K may be withdrawn and copies substituted therefor? In other words, blue print copies of H, I, J and a true copy of K?

[Printer's Note: Defendant's Exhibit K is set out in full at page 110 of this printed Record.]

Mr. Donohue: I would so stipulate, subject to the qualification that the court view of original and when it serves his purpose these may be substituted.

Mr. Wilson: Subject to that qualification. For [118] your purpose in this matter, I had better give you copies of these blueprints so you will have them for reference. (Hands copies of blueprints to counsel.)

CHARLES WEMKEN,

a witness for the plaintiff, being first duly sworn, testified as follows:

(Testimony of Charles Wemken.)

Direct Examination

By Mr. Donohue:

Q. State your name please.

A. Charles Wemken.

Q. And by whom and what official capacity are you employed, Mr. Wemken?

A. I am area rent director for the Reno defense rental area.

Q. How long have you been employed in that capacity? A. Two years and eight months.

Q. Are you familiar with and have you personally inspected the housing accommodations described as 415 E. 8th Street, Reno, Nevada?

A. I am and I have.

Q. Now with particular reference to the accommodations, we will say prior to February 1st, do the records of your office indicate how those particular accommodations were rented about 1943 to 1946?

A. In two sections, a duplex. The owner occupied the rear portion, 415½. The front portion, 415 was rented.

Q. And just for the information of the court, will you state [119] what the premises at 415 were rented for? What rent, do you know?

(Question read.)

Q. According to the records in your office, what was the maximum for the tenant-occupied unit?

A. The rental was changed on that a couple of times, as I recall; \$57.50 and then reduced because the owner removed an ice-box, refrigerator.

(Testimony of Charles Wemken.)

The Court: Reduced to what amount, did you state, Mr. Wemken? A. \$55.

Q. For the purpose of refreshing your recollection, Mr. Wemken——

Mr. Wilson: I will stipulate that those were the rentals.

Mr. Donohue: If you look at the lower Exhibit C, that reflects that the original rent was \$45 as an unfurnished rental.

A. The original rental was \$45 per month unfurnished. That was filed January 15, 1943. Then it was re-registered on October 15, 1945. It was furnished and rental of \$57.50 and subsequently that reduction, due to the removal of the refrigerator, reducing it to \$55.

Q. And this document here reflects that last adjustment in rent, is that correct? [120]

A. That is correct.

Q. Now an application for decontrol was filed in your office——

The Court: Let me ask you a question. Those exhibits that Mr. Wemken used, they are exhibits, are they not?

Mr. Donohue: Yes.

The Court: I do not think you referred to exhibit numbers in that question.

Mr. Donohue: Exhibit No. 4, on which the witness testified the original rent at 415 E. 8th Street was \$45 was the under portion of Exhibit 4. The subsequent registration changed from unfurnished to fully furnished, which the witness stated was filed October

(Testimony of Charles Wemken.)

15, 1945, changed the maximum from \$45 to \$57.50, which is the upper portion of Exhibit 4, and the order which I handed the witness was order of November 8, 1946, decreasing the rent from \$57.50 to \$55, which the witness stated was reduced because of removal of refrigerator, that last order being Exhibit No. 5.

Q. Was an application for decontrol filed in your office for these particular premises, Mr. Wemken?

A. Yes.

Q. About when, if you recall, was that application filed?

A. I wouldn't be sure, but I believe it was probably after the middle of August, 1947. I don't recall the exact date.

Q. In any event, what happened as a result of that? Did you make a physical inspection of the premises? [121]

A. At that time?

Q. Yes.

A. Yes, I made an inspection of the premises and the owner was advised that in our opinion the property was not eligible to decontrol.

Q. What basis, if you recall, was the original application filed on? What was the claim made by the landlord as to the grounds for decontrol?

A. Because of it being conversion, creating additional housing accommodations, conversion having taken place after February 1, 1947.

Q. Now when you inspected the premises——

The Court: Let me get the significance of that again and the answer.

(Question and answer read.)

(Testimony of Charles Wemken.)

The Court: That would go to the reason why he declined the application. As I understand, the significance of that question and answer is that Mr. Wemken found that this conversion had taken place.

A. My answer was not to that effect. It was to the effect that those were the grounds that the landlord filed for petition for decontrol.

Mr. Wilson: I will ask counsel for the government to supply the original application, if he can do so, so that we may have direct reference to the application for those reasons. [122]

Mr. Donohue: I did not find that.

Q. At that time you personally inspected the premises? A. I did.

Q. And what particular changes did you find were made in the accommodations?

A. The duplex had been reconverted from the duplex to a single family dwelling.

Q. Now the net result of that, Mr. Wemken, was that prior to this conversion there were two separate and distinct dwelling units? A. That is right.

Q. And after the conversion there was one dwelling unit, is that correct? A. Yes.

Q. And from your inspection how was that particular conversion accomplished, or the particular change accomplished?

A. The house originally had been a single family dwelling and then by cutting in an outside entrance, this 415½, and closing off the front portion of the house and installing kitchens and baths, it had been made into this duplex, two separate housing units, and then when it was reconverted to a single family

(Testimony of Charles Wemken.)

dwelling, the door 415½ was changed to a window and the partitions that had separated the front portions from the rear portions were removed.

Q. In addition to that, did you observe any other particular [123] change had been made in the premises?

A. Yes, there had been what appeared originally to have been an open rear porch, had been one wall, enclosing it into a sort of sun room and one wall of one bedroom had been extended to make closet space and a new entrance north had been built on.

Q. Did you inspect the basement at the time?

A. Yes.

Q. And what, if any, changes had been made in the basement, according to your observation?

A. There had been a room partitioned off in one corner of the basement, making a sleeping room, and I believe the stairway leading to the basement had been moved from one position to another. I wouldn't swear to that, but I think so.

Q. Was the outside structure changed in any manner? Was the outside structure of the entire accommodation changed in any manner?

A. More by extension of the bedroom and the addition of the entrance north and then the closing in of that side or rear porch made minor changes, yes.

Q. And after your inspection you then issued the order which is plaintiff's Exhibit 1?

A. I issued the order.

Q. And on or about December 12, 1947, did you issue an order changing the rent in any way? [124]

A. Yes, an order was issued changing the rental

(Testimony of Charles Wemken.)

from what was the original registration of the front portion, the duplex, because of additional space and the additional rear portion of the duplex and furnishing of the entire unit and on the strength of some furnace work and several other things, I have forgotten all of them, rental was changed from \$55 to \$180 per month.

The Court: You mean for the entire unit?

A. For the entire unit, yes, sir.

Q. Would you recollect what particular section of the regulation that adjustment was made under?

A. It was under Section 5(a)(1), which is the substantial alteration or addition to the building itself and 5(a)(3) would be additional furniture and equipment.

Q. You previously examined Defendant's Exhibits H, I, J, and K, and I ask you to now examine those exhibits and ask you to state whether, in your opinion, they correctly reflect the changes which were actually made from your observation of the premises at the time of your inspection?

A. With the exception of the minor portion of this Exhibit J, which contains new foundation, and that was the original foundation under the original portion of the house, the rest of it, I think is correct.

Q. Would you point out that particular portion?

A. The portion of the wall. (Indicating.)

Q. That is in Exhibit J, the righthand corner, the portion [125] of the wall there. Would you state with reference to what?

A. I do not think that was new construction. That

(Testimony of Charles Wemken.)

was the original foundation in there, that east wall, when the house was built originally.

Q. Now the particular accommodations—I notice that your order is addressed to the tenant, Mr. Weiser—what particular accommodations, will you state if you know, were rented to Mr. Weiser? Was it a portion of the entire premises or was it the entire premises?

The Court: What order was issued to Mr. Weiser?

Mr. Donohue: The order dated December 12, 1947.

The Court: Fixing the maximum rent?

Mr. Donohue: Yes.

Q. What unit did that relate to?

A. The entire premises.

Q. And do you recall the number of rooms in those particular premises? A. No, I don't.

Q. In any event, the order did not apply to any of the particular rooms in the accommodations, but applied to the entire premises?

A. That is right.

Q. And fixed the maximum rent for those premises on the basis of the entire structure?

A. That is right. [126]

Cross-Examination

By Mr. Wilson:

Q. With reference to Exhibit H, which is the duplex as it existed under the registration as shown in government's Exhibit 4, we examine this blueprint, we find that the accommodations that were rented, that is, the front portion of the structure which was No. 415, consists of the entrance way lo-

(Testimony of Charles Wemken.)

cated on the south side of the building, is that not true? A. Yes.

Q. From there we progress into the living room, going east into a dinette, beyond the dinette to the north is a nook, dining nook, I presume, turning west the kitchen, continuing to the west bedroom, adjoining the bedroom is a bath and cellar stairs going into the basement from the bedroom. Do you recall how that unit was treated at the time, Mr. Wemken, when it was rented? A. No, I do not.

Q. Would it refresh your recollection if I were to tell you it was heated by floor furnace?

A. No.

Q. You have no recollection of that?

A. None whatever.

Q. Do you have any recollection of the building before it was constructed as a duplex as shown on that? A. None whatever.

Q. You have no recollection from your observation and record? [127]

A. The only information I have I secured from the city building inspector; it was originally a one-family house and made into a duplex.

Q. Do your records show that any portion of that duplex was rented other than this extreme southern portion which has been designated as No. 415?

A. No.

Q. Your records show no rental of any units in the northerly portion of that building?

A. No record of it, no.

Q. Now if we will refer to Exhibit I, the structure as it exists today, having reference to Exhibit

(Testimony of Charles Wemken.)

H. we find that the entrance to the structure is not only on the southerly wall, that is, the west extremity, but that we now enter into the eastern wall at the southern quarter and enter into a reception room which was non-existent at the time it was a duplex?

A. That is correct.

Q. And opening off the reception room is a closet which was non-existent at the time of this duplex?

A. That is right.

Q. Progressing from the reception room, we come into a living room, which was made up partially of the living room in the old structure?

A. Completely.

Q. Perhaps completely. As we progress easterly into the [128] dinette in the duplex we find that this is now a bedroom with closets that did not exist at the time the duplex was in existence?

A. All except the closet existed.

Q. That is the structure did, but at that time it was a dinette and it is now constituted as a bedroom?

A. That is right.

Q. And at the time it was a duplex that room was not a bedroom but it was a dinette?

A. That is right.

Q. Now as we take the next room to the north, we find it is a bedroom as it now exists and when it was a duplex that space occupied by what is now a bedroom was then a kitchen and dining nook?

A. That is right.

Q. What is now the bedroom was not a bedroom when it was a duplex. Let us take the bathroom off

(Testimony of Charles Wemken.)

the bedroom. That did not exist at the time the property was a duplex?

A. Not as a bathroom. It was still a portion of the house.

Q. It was a porch or something of that kind, perhaps even a patio. I am not sure whether that would be under room or not. Do you recall?

A. No.

Q. But at least it was a porch or patio or something of that kind under the duplex. Now the dining room in the present [129] structure immediately west of the bedroom we are mentioning was in the duplex a bedroom? A. That is correct.

Q. And now it is not a bedroom but it is a dining room. And the closet space that is off the dining room used to be the stairway to the basement, but it is now a closet? A. Yes.

Q. Now as we progress to the north through a hallway that did not exist in the duplex, we arrive today at what is a bedroom. That bedroom under the duplex was a living room, a bedroom where we used to have a living room. In the old duplex, as we went east from the living room we went into a breakfast nook. Today as we go east from the bedroom that used to be the living room we wind up in a kitchen. Now there has been a substantial alteration in the location of the kitchen. What was the breakfast nook is now the kitchen and these are the cupboards, been somewhat rearranged apparently. As you leave the kitchen you go into a hall and travel north, we go into two bedrooms. The bedrooms in the duplex are identical with the bedrooms in the present structure.

(Testimony of Charles Wemken.)

Those two bedrooms are in the portion of the duplex that was owner occupied, is that correct?

A. That is correct.

Q. Now the bath that is immediately to the south of these two bedrooms is exactly in the same position today as it was at [130] the time it was a duplex. That bath is in the portion of the building that was owner occupied at the time it was a duplex, is that right?

A. That is right.

Q. We progress through the hall from the bath further south and we enter a breakfast room. That, at the time this was a duplex, was a screened porch and that breakfast nook has been somewhat enlarged by the additional structure being created in the building as it exists today, is that correct?

A. That is correct, yes.

Q. Then in the building as it exists today we have one bedroom, two bedrooms, three bedrooms, four bedrooms, five bedrooms on the main floor and the only two of those bedrooms that were in existence as bedrooms at the time this was a duplex are the two bedrooms in the extreme northeast portion of the owner occupied part of the duplex?

A. That's right.

Q. In the basement there is an additional bedroom created where none existed before?

A. There is one now. I have no recollection.

Q. Today the entire unit is heated from a central heating plant, that is, piped heat to each room throughout the dwelling as it exists today. You have no recollection how it was heated before?

A. None whatever. [131]

(Testimony of Charles Wemken.)

Q. The construction of the south end of the building, constituting a reception hall and entrance closets and two closets off the bedroom and the addition on the east end, that is a part of the breakfast room and entrance way to the cellar stairs, involved the construction of new sides, etc., in order to make those structural changes? A. To some extent.

Mr. Wilson: I have no further question.

Redirect Examination

By Mr. Donohue:

Q. The bedrooms which were made were existing rooms that were still part of the existing structure, isn't that correct? A. That is correct.

Q. In the fixing of your rent, who was to supply the utilities for the accommodations here I might ask?

A. The tenant.

Q. The entire structure was rented to the tenant, was it furnished or unfurnished?

A. Furnished.

Q. But the tenant was to supply all utilities?

A. With the exception of water. I don't recall whether he was to pay for that or not.

Mr. Wilson: I have nothing further of this witness.

Mr. Donohue: That is all, Mr. Wemken. Plaintiff rests. [132]

MRS. DOROTHY WARD GINOCCHIO,

the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Wilson:

Q. Will you please state your full name?

A. Dorothy Ward Ginocchio.

Q. You are the owner of certain premises that are involved in litigation in this matter in the City of Reno? A. I am.

Q. Those premises, in the year 1946, consisted of a duplex, 415 and 415½ East 8th Street?

A. Yes.

Q. And subsequent to the first of February, 1947, those premises were numbered what, 415½?

A. Yes.

Q. East 8th Street, Reno, Nevada?

A. Yes.

Q. I show you Defendant's Exhibit H, I, and J; first, with reference to Exhibit H, and ask you if that is a floor plan or a copy of the floor plan of the duplex as it existed in the year 1946? A. Yes.

Q. Was the original tracing, that is the original exhibit in evidence here, drawn by your father?

A. It was.

Q. Your father was a building contractor of Reno, Nevada? [133] A. Yes.

Q. And he is now deceased?

A. That is right.

Q. Was the building, as it existed in 1946, exactly as depicted upon the exhibit? A. Yes.

(Testimony of Mrs. Dorothy Ward Ginocchio.)

Q. In other words, there were two distinct dwelling units? A. Yes.

Q. The one in front was numbered 415, the one in the rear numbered 415½? A. Yes.

Q. The one in front was rented pursuant to registration reducing service, which are the government's Exhibit 4? A. Yes.

Q. Did any one other than yourself and family ever occupy the rear portion, which is 415½?

A. They did not.

Q. The only other person there was a small child that you took care of when her mother died?

A. Yes.

Q. And that wasn't a paying guest in the house?

A. No, sir.

Q. Now there is a wall along the southerly line of the living room, that is the northerly living room, that constituted a division between the two dwelling units? [134]

Q. Now, with reference to Defendant's Exhibit I, I ask you if that truly depicts the ground floor plan of the structure that is now known as 415½ East 8th Street in Reno, Nevada? A. Yes.

Q. Is that the structure that was leased to Mr. Weiser by lease dated August 20, 1947, and introduced in evidence here as Defendant's Exhibit K?

A. The date on that was August 1st, not the 20th that it was entered into. That is, it was entered into the 31st of July.

Q. I see. The term started on the first of August?

A. Yes.

Q. Of 1947? A. Yes.

(Testimony of Mrs. Dorothy Ward Ginocchio.)

The Court: Do I understand her answer to be that the lease covers the entire premises?

Q. The entire premises as depicted on Exhibit I which you hold in your hand? A. Yes.

Q. Now the separating wall between the dwelling units known as 415½ and 415 as it existed as a duplex was removed?

A. Yes, that complete wall, all the way back.

Q. You are indicating the southeast corner of what is now designated as a bedroom?

A. A bedroom; from there clear back to the wall that is beginning of this bathroom. That entire partition was removed [135] and an entire new structure built in there.

Q. And there was also additional floor space provided by the new structure to furnish a reception room and closet, to furnish closets for what may be designated as the south bedroom, to increase the size of the breakfast room, the entrance way to the cellar stairs and the bathroom that adjoins the cellar stairs, that was entire new construction, involving installation of new foundation? A. Yes.

Q. Involving the installation of new brick walls?

A. Yes.

Q. Involving the installation of new roofing?

A. Yes.

Q. And did that also involve the removal of the original foundation?

A. In some instances some of the original foundation had to be removed in order to properly tie in and make the construction uniform and the same. May I

(Testimony of Mrs. Dorothy Ward Ginocchio.)

add here there are 240 square feet of new building added to this, not taking in the back part.

Q. New floor space?

A. Two hundred forty square feet new floor space added to that.

Q. Now with reference to the building as it exists today, are the rooms as designated in this plan used for the purposes designated on this plan?

A. Yes. [136]

Q. In other words, as you come in, you come into a reception room? A. Yes.

Q. From there into the living room?

A. Yes.

Q. And going easterly into a bedroom?

A. Yes.

Q. And each room as we progress through the house is used for the purpose designated on the plan?

A. Yes.

Q. Now with reference to Defendant's Exhibit J, I call your attention to a bedroom in the northwest corner of the basement. Was that in existence at the time the structure was a duplex?

A. No, it was not. That was fixed for a furnace. This portion back here was all cut out.

Q. How was this structure heated as a duplex?

A. By two floor furnaces.

Q. One for each unit?

A. One for each unit.

Q. So that the floor furnace that was in the area that is now designated bedroom on Exhibit J heated the portion to the north that was owner occupied?

A. Yes.

(Testimony of Mrs. Dorothy Ward Ginocchio.)

Q. And where was the furnace that heated the renter occupied [137] portion?

A. On this wall, this room in here, the furnace area was in here.

Q. In other words, you are indicating the south-east corner of the bedroom that is immediately off the living room in the tenant occupied portion of Defendant's Exhibit H? A. Yes.

Q. And today how is the structure heated?

A. It is heated by a central furnace that is piped to each room.

Q. The old floor furnaces have been removed?

A. Yes.

Q. And each of the partitions that are marked in on Exhibit I "new partitions", they were non-existent at the time this was a duplex?

A. Yes.

Q. Those partitions that are not shaded are partitions that were in existence at the time it was a duplex? A. That is right.

Q. Now with reference to Exhibit J, do the shaded portions here also show new partitions and new work?

A. All of that is correct with the exception of a small portion right here up——

Q. "Up here", you are indicating a portion of the east wall that would be underneath what is now a bedroom and another bedroom on the east side of the building, the southeast corner [138] of the building?

A. From this point from where this place started over and up and all of this is all new construction.

(Testimony of Mrs. Dorothy Ward Ginocchio.)

Q. On the eastern portion there was a few feet shaded that actually were in the duplex?

A. Yes, this small portion in here, but the rest of that is all new foundation.

Q. And all new partitions in the basement where the shaded portions are?

A. Yes, this partition was put in on account of building the bath where a small open porch was before.

Q. I call your attention to page 1, Exhibit K, to the designation, the word "Guest House at 415 $\frac{1}{2}$ " with the $\frac{1}{2}$ exed out. A. Yes.

Q. Do you know how that "x" happened to get on there?

A. No, I do not. I do not think any of the other copies of the lease even have that "x" check on it. It was intended to remain 415 $\frac{1}{2}$ East 8th Street.

Q. Is that the number that the dwelling house bears at this time?

A. Yes, that is on there which all building permits were issued for and also a guest house license issued for 415 $\frac{1}{2}$.

Q. That has been the number on the building ever since the termination of the improvements as designated on the Exhibit I? A. Yes. [139]

Q. Actually this structure is situated to the rear of the land? A. That is right.

Q. And there is approximately what distance from East 8th Street back to the southerly wall of this building?

A. Offhand I would say roughly 75 feet.

Q. This building is located on the north side of

(Testimony of Mrs. Dorothy Ward Ginocchio.)

East 8th Street? A. Yes.

Q. And sets back approximately 75 feet from the street? A. Yes.

Mr. Wilson: You may question.

Cross-Examination

By Mr. Donohue:

Q. In any event, Mrs. Ginocchio, this lease was entered into for the entire premises, was it not, the lease just referred to?

A. Major Weiser and his wife leased the entire premises.

Q. Regardless of whether it was designated as 415 or 415½?

A. It was designated as 415½ and always intended to remain as 415½.

Q. In any event, it referred to this entire structure? A. The entire structure.

Q. Now when you refer to a new foundation, with the exceptions I think you pointed out there, you are referring, are you not, to replacement of an existing foundation, isn't that correct?

A. No, I am not. I am referring to the new foundation that [140] went in for the new additions that were added to that building.

Q. Can you tell me, Mrs. Ginocchio, the total floor space? A. Total floor space—

Q. Just a moment—before the conversion and after the conversion of the structure?

A. I could if you give me back those plans and let me measure.

Q. Offhand you can't?

(Testimony of Mrs. Dorothy Ward Ginocchio.)

A. The floor space I know and the additional—and the new additions, were 240 square feet—I would say there must be around 2,500 or more square feet floor space.

Q. So you added a total of 240 square feet space?

A. Of new building.

Q. How about the roof? Would you know the existing area of the original roof prior to the alteration?

A. No, because they go by squares on that and I know that the original roof going back this way and hip going back this way before they got through added another hip roof to the front and another hip roof to the side.

Q. Can you tell me what the overall increase in the roof according to the space was?

A. That I wouldn't even attempt to answer because not being well enough versed on those things to know how to answer intelligently, I wouldn't commit myself.

Mr. Donohue: That's all. [141]

Redirect Examination

By Mr. Wilson:

Q. I show you eight photographs, Mrs. Ginocchio, numbered 1 to 8 on the back, and ask you what those photographs depict?

Mr. Donohue: May I see them first?

A. This No. 1 refers to that addition we put on the east side.

Mr. Wilson: Let me show them to Mr. Donhue.

(Testimony of Mrs. Dorothy Ward Ginocchio.)
(Hands to counsel.) Do you have any objection to their being marked as Exhibit L as a unit?

Mr. Donohue: No, no objection.

(Short recess.)

3:20 P.M.

Mrs. Ginocchio resumes the witness stand on further

Redirect Examintion

By Mr. Wilson:

Q. By whom were these photographs, defendant's Exhibit L, taken, if you know?

A. By my youngest son.

Q. And his name?

A. Robert D. Ginocchio.

Q. Where is he at the present time?

A. He is stationed at Oakland.

Q. In the service? A. Yes.

Q. Military service? A. Yes.

Q. When were those pictures taken? [142]

A. Those pictures were taken during the time this reconversion was taking place on the premises.

Q. Approximately how long a period of time was occupied in changing of the duplex, as depicted in Exhibit 8, to the present structure as exhibited in Exhibit I?

A. Between four and five months.

Q. And briefly what do those pictures depict with reference to the number on the back of each?

A. No. 8 shows the foundation forms that were

(Testimony of Mrs. Dorothy Ward Ginocchio.)

put in across the front of the house for addition of the reception room and the addition to this present dinette in order to convert it into a bedroom and thereby add two closets to it.

Q. That is on the south wall of the building?

A. That is on the south wall of the building, yes.

Mr. Donohue: I would like to see if we can't fix the date a little more closely on that.

Mr. Wilson: All right, we will try.

A. Well, from the beginning of the time the construction started. We started construction along about the 15th of December, that is the interior construction of the house.

Mr. Donohue: Of what year?

A. That would be 1946 because the lease was entered into in 1947. This is in 1946 we started, about December 15, 1946, is when we started to tear out some of the interior partitions in the part of the duplex that we were then occupying and then [143] this exterior work started right after the first of January.

Q. How long was the period of construction, how long did it take?

A. From the time started I think every day.

Q. About how many months?

A. The actual construction was about five months and then we had finishing to do, such as painting and things like that, that were finished just before Mr. Weiser moved into the house the 31st of July, when he took possession of the premises. This picture here shows——

(Testimony of Mrs. Dorothy Ward Ginocchio.)

Mr. Wilson: What number?

A. No. 3 shows an east view looking north at the house before any construction started, with the exception of the forms being in there for the foundation and footings for this entire new addition that goes clear out here.

Q. That is along the easterly wall of the structure?

A. Easterly wall, looking north. This picture here, No. 6, looking at the east wall, shows the east porch that existed—it really wasn't a porch, more or less a patio—that was on the east side of the house where that addition was added there. And then we had a small roof that came out just a little so it covered this end into the basement, covered it over, and that part was screened over. This No. 7 shows the roof that was added to that portion designated as present breakfast nook and also a part of that construction there. No. 1 [144] shows construction of that wall that I showed you at first, shows this part of the house back here.

Q. That is along the east wall?

A. The east wall here, which is now this portion here, is No. 2, shows a portion of the new roof over the reception room and also shows the new chimney that was constructed on one side of the house for the new furnace. Then this picture here, No. 4, shows the front entrance as it then existed of the duplex and it shows the forms in place of the new foundation for this new reception room and this new front porch that was built.

Q. Was that entrance to 415 or 415½?

(Testimony of Mrs. Dorothy Ward Ginocchio.)

A. This was entrance to 415, and this No. 5 shows the front entrance after the front door had been removed and a window replaced in it and shows the new door entering from the west side of the house, but the original steps are still there, they hadn't yet put in the new steps and porch there.

Q. This was entrance to 415½ as it now exists, 415 as it used to be? A. Yes.

Q. And that also shows work tearing out and construction?

A. Oh, yes, before they finished the roof they tore out all this back structure and there had to be an entire new front put in there and had to be all rewired, the whole house.

Q. With reference to No. 4 there is a child depicted in the doorway. That is the child whose mother died and you took [145] care of until the father could find accommodations?

A. Until he remarried, yes.

Q. In the process of this conversion or conversion of the duplex to its present form, what happened to the plumbing fixtures?

A. All of them had to be removed and all new plumbing put in their place.

Q. In other words, the two baths that did exist were stripped of fixtures?

A. The one bathroom was completely stripped.

Q. Which one?

A. Out of the front unit. Took even the plaster off the walls and rearranged the fixtures, put in

(Testimony of Mrs. Dorothy Ward Ginocchio.)

entire new plumbing in there and all new bathroom fixtures and tiled the bathroom and, of course, new plaster and then the bath room that existed in the part that I occupied, that had to have some changes in plumbing there on account of the way they had put in the heat, necessitated changing some of the plumbing there also and then we had to have all new plumbing put in the kitchen of the front unit, that was all new plumbing and fixtures in there, so while they were working there in making the changes in the bathroom that they did, the plumber said it was almost necessary to put new plumbing in the kitchen, while we were having new drain and tile he thought we should have new plumbing, so he put all new plumbing in there. [146]

Q. New tile work and drain board?

A. All new tile work in the house, yes.

Recross-Examination

By Mr. Donohue:

Q. No. 7 here, that dark appears to be——

A. That is the new roof and that is the hip across the top, over the east construction of that room.

Q. What I want to know is, was there formerly some type of roof there where that roof is?

A. There used to be a small shade roof that went down just a few feet to cover that basement entrance there so the water wouldn't run down into it. It wasn't really what you call a roof, it was more or less a shade.

(Testimony of Mrs. Dorothy Ward Ginocchio.)

Q. But it covered the space which that roof covers?

A. No, it did not. Before the space had been about five feet, by oh, not more than seven feet wide and now it is 12 feet inside, finished; more than seven feet of roof space, an entire new roof.

Q. Figuring lineal floor space, I believe you said the roof originally extended five feet and this extended over seven more feet? A. Yes.

Q. But this was an angle roof rather than a flat shade?

A. Well, the shade was what you would call it, came down on an angle but that was torn out and this roof was built, as you can see, back into the hip this way. I imagine you would say [147] the roof extended approximately 18 feet long, all of 18 feet at the hip to the back.

Redirect Examination

By Mr. Wilson:

Q. Mrs. Ginocchio, in addition to the two thousand dollars that was received at the time of the execution of the lease, what sums of money have you received from the lessees in this matter?

A. In July of 1948 I received a check for \$90; on August 1st I received one for \$180, and September 1st \$180 and October \$180.

Q. That is the sum total?

A. The sum total of the checks.

Q. Is that all of the checks that you have received, including one check that you have written on the bank——

(Testimony of Mrs. Dorothy Ward Ginocchio.)

A. No, I have received a check you have in your possession and two others which have not been cleared through the bank.

Q. There is in my possession one check in addition to what you mentioned? A. Yes.

Q. Do you know the amount of this check?

A. Yes, \$180.

Q. And there is one written by Miss Hunter?

A. That is right.

Q. And there is a check that hasn't been cleared written by a Ruth Stewart in Utah? [148]

A. Correct.

Q. And the amount of that check?

A. \$180.

Q. What else?

A. A check I received on the First National Bank Branch of Reno by Mr. Weiser of \$180.

Q. That has been cashed? A. Yes.

Q. That makes six checks for \$180 received and one check for \$90 received, plus two thousand dollars received at the time of the execution of the lease agreement? A. Yes.

Recross-Examination

By Mr. Donohue:

Q. The \$90 check was paid by whom? Whose check was it?

A. I believe that it was one of Miss Hunter's checks. I am not sure, I can't remember because part I received from Mr. Weiser and some Miss Hunter and this check from Mrs. Stewart. I can't be sure whether that \$90 was Mr. Weiser or not.

(Testimony of Mrs. Dorothy Ward Ginocchio.)

It could be. Yes, I know, because the check bounced.

The Court: What check was that?

A. The \$90 check. He wrote "insufficient funds."

Q. Was it finally paid?

A. Finally, yes, about a month later.

Q. And the money received since July, 1948, to the present time has been either Mr. Weiser's check or check for or on [149] his behalf, is that correct?

A. By Miss Hunter and one by Mrs. Stewart.

Q. What happened during the period December, 1948, to July? Was the amount of the rent tendered to you?

A. At one time Mrs. Weiser and Mr. Weiser were involved in a divorce proceeding and Mrs. Weiser attempted to pay a half month's rent to me, which I refused. Then right after that, through Mr. Weiser's counsel, Miss Hunter, they attempted to make an agreement with me whereby I would cancel all rental owed from January and February plus all rental that they had received from their tenants up to the 15th of March and also give Mrs. Weiser \$500 and give Mr. Weiser \$1100. All told it would have amounted that we made refund to them of approximately, I would say, \$2300, and they would have the use of the house from August to the first of March, rent free, and we refused that offer.

Q. You have mentioned the court decree—they were having some difficulty. Do you know whether

(Testimony of Mrs. Dorothy Ward Ginocchio.)

or not under that decree these particular premises were not ordered by the court to be in the possession of Mrs. Weiser under this lease?

A. The only thing that I have to go by is what I was told. I saw no document, read no document from the court nor at any time was I informed of the procedure that the court was taking in regard to the disposition of this lease or anything relative to it. [150]

Q. And at various times, through your counsel, former counsel, Mr. Richards, wasn't the rent during the period January, 1948, to July, 1948, tendered, through your counsel, Mr. Richards, to you by Mrs. Weiser?

A. No, it was not. If it was, Mr. Richards didn't tell me so and Mr. Richards' integrity is such that it wouldn't be questioned.

Mr. Donohue: That is all.

Mr. Wilson: I have no further questions.

Mr. Donohue: Your Honor, with reference to that last matter, I have a witness in rebuttal.

CHARLOTTE HUNTER,

a witness for the plaintiff, was duly sworn and testified in rebuttal, as follows:

Direct Examination

By Mr. Donohue:

Q. Will you state your name, please?

A. Charlotte Hunter.

Q. Miss Hunter, under this decree I will call

(Testimony of Charlotte Hunter.)

your attention to this paragraph here and do you know what premises that has reference to?

A. The premises in question.

Q. The premises involved in this suit?

A. That is right.

Q. Will you just state briefly what—that is a court decree dissolving the marriage of Mr. Weiser and under that decree the leased premises which are involved in this suit were [151] awarded to Mrs. Weiser?

A. No, I wouldn't know. I didn't represent Mr. Weiser at that time.

Q. Do you know, and in your presence, was the rent tendered by Mrs. Weiser to Mr. Richards, who was counsel for Mrs. Ginocchio?

A. In my presence and in the presence of Mr. Richards, Mr. Lougaris, counsel for Mrs. Weiser, tendered two months' rent, as I recall.

Q. About when was that?

A. That was some time after the divorce. I can't tell you exactly what month. There was a conference held at these premises and three attorneys were present.

Q. And the rent was refused by Mrs. Ginocchio's counsel, is that correct?

A. The rent was refused, yes.

Q. And was there any reason stated?

A. I don't know that the reason was stated then but I think Mrs. Ginocchio at some time stated she was afraid she would jeopardize her position or

(Testimony of Charlotte Hunter.)

jeopardize herself later with the OPA asking for rental on the lease.

Q. But at least on one occasion when two months' rent was tendered you were present?

A. Yes.

Q. Do you recall the amount? [152]

A. In the amount of \$180.00 monthly rental.

Q. The total amount therefore was \$360?

A. That was my understanding.

Q. Did you have an explanation you wanted to make in connection with this?

A. This is very difficult. I did not expect to be called as a witness and I asked Leota Rainsford if she would check the minutes because that decision very clearly gives possession to Mrs. Weiser by Judge Maestratti and counsel decided what the distribution of the property should be, both counsel understand, there isn't any misunderstanding there, that Mrs. Weiser was given possession of the property for six months and she was taking on all obligations, should pay utilities and rental until these first six months expired, after which he would pay the rental.

Mr. Wilson: I can't help but object. If that be in the minutes of the court, it is perfectly simple matter to produce the minutes. We have the decree of court. I have no objection to its introduction, no objection to its form and introduction at all. I am quite willing to let it speak for itself, but for some one, who wasn't present in court and who has not examined the minutes, except talking to the court

(Testimony of Charlotte Hunter.)

reporter, to testify as to what took place, I must object.

The Court: Objection will be sustained. [153]

Mr. Donohue: This is offered in evidence. No objection by counsel.

The Court: Marked as plaintiff's Exhibit 7.

[Printer's Note: Plaintiff's Exhibit No. 7 is set out in full at page 122 of this printed Record.]

Cross-Examination

By Mr. Wilson:

Q. In what form was tender made by Mr. Lougaris on the occasion that you mention?

A. Frankly, I couldn't tell you. He had envelopes which contained either the money or checks. I wasn't very much concerned with that at that time.

Q. You don't know whether it was money or checks? A. No, I do not know.

Q. Do you know exactly what the amount was?

A. Other than what was spoken of \$180.

Q. Did you say the tender was for two months?

A. That was my understanding. Mr. Lougaris was representing Mrs. Weiser and I wasn't particularly concerned at that time.

Q. So after all you don't have a very independent recollection of what was tendered, the form and amount?

A. I have a recollection as to the amount from the conversation. The form I do not know.

Mr. Wilson: That is all.

(Testimony of Charlotte Hunter.)

Mr. Donohue: That's all, Miss Hunter.

The Court: Any further testimony?

Mr. Donohue: Plaintiff rests.

Mr. Wilson: Defendant rests. [154]

The Court: Now facts that appear in this testimony cause me to make a finding, and I am going to make a finding that on or after February 1, 1947, additional housing accommodations were created by conversion of these premises. If this is in the nature of review of the order refusing decontrol, the order will be that these premises are not subject to control under the statute. They are within the exemption set forth in Section 1892 of Title 50 Appendix to the United States Code Annotated. The prayer for permanent injunction is denied and the prayer for an order ordering the defendant to tender the sum of \$1100 is also denied, and it is ordered that these premises are decontrolled under the housing act of 1947. [155]

State of Nevada,

County of Ormsby—ss.

I, Marie D. McIntyre, the duly appointed official court reporter in the United States District Court, do hereby certify: That I was present and took verbatim shorthand notes of the testimony adduced at the trial of case No. 675, wherein Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, is plaintiff, and Mrs. Dorothy Ward Ginocchio is defendant, held in Carson City, Nevada, on the 19th of January, 1949, and that the preceding pages, numbered 1 to 86, inclusive, comprise a true and cor-

rect transcript of my said shorthand notes, to the best of my knowledge and belief.

Dated at Carson City, Nevada, April 25, 1949.

/s/ MARIE D. McINTYRE,
Official Reporter.

[Endorsed]: Filed April 26, 1949. [156]

DEFENDANT'S EXHIBIT A

Office of Rent Control, O.H.E.
131 West Second Street
Reno, Nevada

Office of Price Administration

August 13, 1947

Mrs. Dorothy Ward Ginocchio
1668 Oak Glen
Reno, Nevada

Dear Mrs. Ginocchio:

After my telephone conversation with you this morning, I called Mr. William Goldbaum, one of our regional rent attorneys in San Francisco, regarding your case. He sustained my opinion that this property is not eligible for decontrol.

He also advised that the proper procedure to establish rental for the house as it now exists, is by a petition from you for an adjustment in rent. In this petition you must state exact figures of cost of the improvements, including furnishings, and substantiate your statement by receipted bills.

I am, therefore, dismissing our D-18 action, Docket

8-RE-18-822, and enclosing two forms of our D-1, Petition for an Adjustment in Rent.

Will you please complete these forms in detail, and return them to this office.

Very truly yours,

/s/ CHARLES WEMKEN,
Area Rent Director.

Encl.—CW/gs.

DEFENDANT'S EXHIBIT K

This Agreement of lease made and entered into this 30th day of July, A.D., 1947, by and between Dorothy Ward Ginocchio of the City of Reno, County of Washoe, State of Nevada, party of the first part, hereinafter referred to and designated as the Lessor, and Matthew S. Weiser and Helen A. Weiser, his wife, the parties of the second part, hereinafter referred to and designated as the Lessees:

Witnesseth:

That the said Lessor, for and in consideration of rents, covenants and agreements hereinafter mentioned, reserved and contained on the part and behalf of the said Lessors to be kept paid and performed, does by these presents demise and let unto the said Lessees, and the said Lessees do by these presents hire, rent and take from the said Lessor all of the following real property known as the Guest House at 415 East Eighth Street in the City of Reno, County of Washoe, State of Nevada, and the personal property thereto, more particularly described in Exhibit "A" and made a part hereto.

To Have and To Hold, the above described premises, together with the appurtenances, unto the said Lessees from the first day of August, A.D., 1947, for and during the full term of Two (2) Years thereafter, thence next ensuing and fully to be complete and ending, the Lessees yielding and paying therefore unto the said Lessor the monthly rental and the sum of Two Hundred and Fifty (\$250.00) Dollars in United States money in advance on the first day of each and every month of said term, rental of the first month (August 1, 1947, to August 31, 1947) and the last five months (from March 1, 1949, to July 31, 1949), a total of Fifteen Hundred (\$1,500.00) Dollars has been paid in advance by the Lessees and receipt of the same is hereby acknowledged by the Lessor. In addition to the rental above reserved, the Lessees agree to pay for all electric, water, fuel and other bills contracted in connection with the said leased premises and to hold the Lessor absolutely free from any and all liabilities in connection with the same.

It Is Specifically Understood by and between the parties hereto that the said premises are leased unto the Lessees for the sole purpose of conducting therein a Guest House (specializing in board and room), and the said Lessees hereby agree that they shall conduct such business herein mentioned in an orderly and peaceful manner, strictly within the city ordinances and state laws, and the said Lessees do hereby grant unto the said Lessor, her agents or attorneys, and to all officers of the law the right to enter and search the said premises, and every part thereof, with and without a warrant of search, for the purpose of

determining to their satisfaction that the said premises and all parts thereof are being strictly used in compliance with all conditions herein contained.

It Is Further Understood and agreed by and between the parties hereto that the said Lessees do hereby promise that they will, during the term of this lease, at their own cost and expense, keep and maintain the premises and the whole thereof, especially the plumbing up to the main line, in good condition and repair as the same is now or may hereafter be put into.

Provided Always, nevertheless, that if the rent above reserved, or any part thereof, shall be in arrear or unpaid on any day of payment whereon the same ought to be paid as aforesaid, or in default shall be made in any of the covenants herein contained on the part or behalf of the said Lessee to be paid, kept or performed, to declare them Tenants At Will, then and from thenceforth it shall and may be lawful for the said Lessor into and upon the said premises, and every part thereof, wholly to re-enter, and the same to have again, repossess, and enjoy as in her first and former estate, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. And the said Lessees do hereby covenant and agree to and with the said Lessor that the said Lessees shall and will monthly, and every month during the said term, well and truly pay, or cause to be paid, unto the said Lessor, the said rent, on the days and in the manner limited and prescribed as aforesaid for the payment thereof, without any deduction, fraud, or delay, according to the true intent and meaning of these presents; nor assign this lease, nor per-

mit any other persons to improve the demised premises, or make or suffer to be made any alteration therein but with the approbation of the Lessor's consent in writing having been first obtained; and that on the last day of said term, or other sooner determination of the estate hereby granted, the said Lessees shall and will, peaceably and quietly, leave, surrender, and yield up unto the said Lessor the said premises and the furniture thereto as described in Exhibit "A", in as good state and condition as the same are now or may be put into, reasonable use and wear thereof and damage by the elements excepted.

It Is Further Understood and agreed upon, that the Lessees shall save and hold harmless the Lessor from any and all claims of liability with death or injury to a person or persons, or damage to property occasioned by the negligence of the Lessees, or any of his or their employees, and occurring in and on, or about the premises while the Lessees are in actual possession of the premises.

It Is Further Understood and agreed upon by and between the parties hereto that no waiver by the Lessor at any time of any of the terms, covenants, conditions or agreements of this lease shall be deemed or taken as a waiver at any time thereafter of the same or any term, covenant or condition or agreement herein contained, nor of the strict and prompt performance thereof by the Lessees. It is further mutually understood, covenanted and agreed upon by and between the parties hereto, that in the event the building or premises shall during the term of this lease be so damaged or destroyed by fire, war,

or act of God (not due to the act and omission of the Lessees, their agents or employees, or any person or persons who may be in or upon said demised premises with the consent of the said Lessees) as to render said leased premises untenable for the ordinary uses of which it is put by said Lessees, then in that event said Lessees shall not be liable for rent until said building or premises are restored and made tenantable again; provided, however, that in the event the damage occasioned to said building by reason of such fire shall not be repaired and said premises not made tenantable for the former use of the Lessees within ninety (90) days from date of such fire, then this lease shall be terminated at the option of the Lessor or Lessees hereto, and nothing herein shall be construed as obligating the Lessor to rebuild or repair the said premises, but it is agreed that in the event said premises is again placed in a tenantable condition for the use of the Lessees within ninety (90) days from the date of any fire, that the Lessees are obligated to resume their possession and occupancy from the date that said premises are again tenantable and then under the terms and conditions of this lease.

In Witness Whereof, the said parties have hereunto set their hands, the day and year first above written.

/s DOROTHY WARD GINOCCHI,
Lessor.

/s/ MATTHEW S. WEISER,
Lessee.

/s/ HELEN A. WEISER,
Lessee.

PLAINTIFF'S EXHIBIT No. 1

Form D-27B.

United States of America
Office of the Housing Expediter
Office of Rent Control

Stamp of Issuing Office: Office of Rent Control,
O.H.E., 131 West Second Street, Reno, Nevada.

ORDER REJECTING DECONTROL RENT

Concerning (Address of Accommodations): 4151½
East 8th St., Reno, Nevada. Apartment No.: House.
Docket No.: 8-RE-DC-33.

To: (Name and Address of Landlord): Joe B.
Ginocchio, 1668 Oak Glen, Reno, Nevada. To: (Name
and Address of Tenant): M. S. Weiser, 4151½ E. 8th
St., Reno, Nevada.

After due consideration of Form D-94 (Report of
Decontrol) and all available evidence, the Rent Direc-
tor has determined that the above described unit or
units do not qualify for decontrol under Section
202(c) of the Housing and Rent Act of 1947, for the
reason checked [] below:

- [X] The unit is not a newly constructed dwelling
unit, the construction of which was completed
on or after February 1, 1947.
- [X] The unit is not a conversion completed on or
after February 1, 1947.
- [] The unit was not in existence on February 1,
1945.

[X] The unit was rented to other than a member of the immediate family of the occupant between February 1, 1945, and January 31, 1947.

* * * *

[In Pencil]: See my letter of Sept. 8, '47.

Date: September 9, 1947.

/s/ CHARLES WEMKEN,
Rent Director.

[Check]

First and Virginia Branch, No. 51
First National Bank of Nevada

Reno, Nevada, Sept. 23, 1947

Pay to the order of Dorothy Ginocchio.....\$250.00
Two Hundred Fifty 00/100.....Dollars

/s/ MATTHEW S. WEISER.

Rent Oct. 1 to 31, inc., premises 415½ E. 8th St.,
Reno.

(Reverse side): Dorothy Ginocchio. Deposit only.

[Check]

First and Virginia Branch, No. 23
First National Bank of Nevada

Reno, Nevada, Sept. 1, 1947

Pay to the order of Dorothy Ginocchio.....\$250.00
Two Hundred, Fifty and 00/100.....Dollars

/s/ MATTHEW S. WEISER,

Rent, Sept. 1—Oct. 1, '47. 415 E. 8th St.

(Reverse side): /s/ Dorothy Ginocchio.

[Check]

First and Virginia Branch, No. 10
First National Bank of Nevada

Reno, Nevada, July 31, 1947

Pay to the Order of R. Redelius.....\$1,000.00
One Thousand 00/100Dollars

/s/ MATTHEW S. WEISER.

To complete payment of \$1,500.00 advance 6 mos.
rent on 415 and 415½ E. 8th St.

(Reverse side): [Stamp] For deposit only. Pay to
the order of First & Virg. Branch 94-2, First National
Bank of Reno, R. Redelius.

[Check]

First National Bank of Nevada
First and Virginia Branch, No. 5

Reno, Nevada, July 19, 1947

Pay to the order of R. Redelius.....\$500.00
Five Hundred 00/100Dollars

/s/ MATTHEW S. WEISER.

Deposit on rent of 415½ E. 8th St., to be used as
guest house.

(Reverse side): [Stamp] For deposit only: Pay
to the order of First & Virg. Branch 94-2, First
National Bank in Reno. R. Redelius.

PLAINTIFF'S EXHIBIT No. 2

Form D-35. (Corrected Copy.)

United States of America
Office of the Housing Expediter

Stamp of Issuing Office: Office of Rent Control,
O.H.E., 131 West Second Street, Reno, Nevada.

ORDER ADJUSTING MAXIMUM RENT

Concerning (Address of Accommodations): 415
East 8th St., Reno, Nevada. Docket No.: 8-Re-1974.

To: (Name and Address of Landlord): Mrs. Dorothy
Ginocchio, 1668 Oak Glen Dr., Reno, Nevada.

The Rent Director, after consideration of all the
evidence in this matter, has determined that the
maximum rent for the above-described accommoda-
tions should be adjusted on the grounds stated in
Section(s) 5(a)(1), 5(a)(3) of the Rent Regulations.

Therefore, it is ordered that the maximum rent for
the above-described housing accommodations be, and
it hereby is, changed from \$55.00 per month to \$180.00
per month.

This order issued December 12, 1947, and is effective
on the date checked below:

From August 1, 1947.

This order will remain in effect until changed by
the Office of the Housing Expediter.

/s/ C. W.,
Rent Director.

To: (Name and Address of Tenant): Mrs. M. S.
Weiser, 415 East 8th St., Reno, Nevada. M. S. Weiser,
LaSalle Hotel, Reno, Nevada.

PLAINTIFF'S EXHIBIT No. 3

[Chas. L. Richards Letterhead]

September 17, 1947

Mr. Charles Wemken, Area Rent Director,
131 West Second Street, Reno, Nevada.

Dear Mr. Wemken:

In Re: Your Docket No. 8-RE-DC-33

This will acknowledge your letter of September 9, 1947, wherein you stated that you had issued to Mr. and Mrs. Ginocchio a final order rejecting decontrol of these accommodations. It is my desire to file further objections to your Ruling but I would rather delay taking the matter up with the Regional Office at San Francisco, Calif., until I have first had the privilege of presenting the facts as we see them to the Board of Control that has been appointed by Governor Pittman, covering this area. I know the appointments have been made but have been unable to ascertain when the organization of that Board will be completed and ready for action.

I shall appreciate definite information on this point from you if you can give it to me. I understand such a Board shall act only in an "advisory" capacity, but I would like to take advantage of the privilege of presenting the matter to them for their determination.

Awaiting any further words from you, I remain
Very sincerely yours,

/s/ CHAS. L. RICHARDS.

CLR:p

PLAINTIFF'S EXHIBIT No. 5

OPA Form: D-35.

United States of America
Office of Price AdministrationStamp of Issuing Office: Reno Defense Rental
Area Office, 285 South Virginia St., Reno, Nevada.

ORDER ADJUSTING MAXIMUM RENT

Concerning (address of accommodations): 415 E.
8th Street, Reno, Nevada.

Docket No. 8-RE-10-69.

To: (Name and Address of Landlord): Dorothy
Ginocchio, 415½ E. 8th Street, Reno, Nevada. (Name
and Address of Tenant): Max Carter, 415 E. 8th
Street, Reno, Nevada.

The Rent Director, after consideration of all the evidence in this matter, has determined that the Maximum Rent for the above described accommodations should be adjusted on the grounds stated in Section(s) 5(c)(1) of the Rent Regulation.

Therefore, it is ordered that the Maximum Rent for the above described housing accommodations be, and it hereby is, changed from \$57.50 per month to \$55.50 per month, for lack of use of electric refrigerator.

Issued Nov. 8, 1946, and effective as per next rental period. This order is now in effect and will remain in effect until changed by the Office of Price Administration.

/s/ C. W.,
Rent Director.

PLAINTIFF'S EXHIBIT No. 6

Office of Rent Control, O.H.E.

131 West Second Street

Reno, Nevada

November 25, 1947

Mr. and Mrs. Joe Ginocchio

1668 Oak Glen

Reno, Nevada

Dear Mr. and Mrs. Ginocchio:

Re: Decontrol premises formerly 415 and 415½
East 8th St., Reno, now being 415 East 8th
St.

The recommendation, which the Area Rent Advisory Board has formulated regarding the above captioned case, after careful consideration of all the facts, and the regulations relating to rent control, is as follows:

Owing to the nature and type of alterations, and since only 240 sq. ft. of floor space have been added, and no contribution made for the provision of additional families; and in view of the many vacancies now existing for single rooms; and in consideration of the primary intent of the law governing controls of rentals, the property must remain under its original controlled status.

We regret that there is no other alternative in view of the expenditure in money to recompense the building's interior.

Our Board feels that you are entitled to apply to

the Area Rent Control Office for an adjustment of rent, however.

We are also mindful of the fact that the controls will expire by law next February 29, 1948, therefore, a reasonable adjustment of rental in the interim will cause no undue hardship.

Yours very truly,

AREA RENT ADVISORY BOARD,
By /s/ RUSSELL MILLS,
Chairman.

RM/gS Cc: Mr. Charles Richards.

PLAINTIFF'S EXHIBIT No. 7

In the Second Judicial District Court of the State of
Nevada, in and for the County of Washoe

No. 114334

MATTHEW W. WEISER,

Plaintiff,

vs.

HELEN ANTHONY WEISER,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECREE

This Cause came on regularly to be heard on January, 15, 1948. The plaintiff appeared in person and by his attorney, Howard E. Browne, Esq., and the defendant appeared personally and by her attorney, I. A. Lougaris, Esq. Evidence was presented in support of the pleadings and the court, after hearing the

testimony and considering the same and all of the files in this action, finds that all of the allegations contained in the defendant's cross complaint are true.

As Conclusions of Law the court finds that the defendant is entitled to an absolute and final decree of divorce from the plaintiff upon the ground of extreme cruelty, and the relief hereinafter granted.

It Is Therefore hereby ordered, Adjudged and Decreed that the defendant be, and she hereby is, granted a decree of divorce from the plaintiff, final and absolute in form, force and effect, the laws of the State of Nevada providing no interlocutory period, or conditions or restrictions on remarriage; and that the bonds of matrimony now and heretofore existing between the plaintiff, Matthew S. Weiser, and the defendant, Helen Anthony Weiser, be, and the same are, hereby dissolved, and the parties freed from the obligations thereof and restored to the status of unmarried persons.

It Is Further Ordered, Adjudged and Decreed that the defendant have the exclusive care, custody, control and education of the said minor child of the parties hereto, namely, Helen Barbara Weiser, born January 27, 1946, until the further order of the Court, with the plaintiff's right of visitation at all reasonable times and places.

It Is Further Ordered, Adjudged and Decreed that the defendant have possession of the property under lease for six months from this date, to-wit; January 16, 1948.

It Is Further Ordered, Adjudged and Decreed that the defendant have use of all furniture and fixtures in the premises during said period; at the end of

six months defendant to surrender premises to plaintiff together with all furniture and all utensils except the following list:

- 1 dozen sheets
- 1/2 dozen pillow cases
- 1 dozen towels
- 4 blankets
- 1 kitchen stool
- 1 bedspread
- 1 sewing machine
- 1 dressmaking dummy
- 1 baby crib
- 1 baby high-chair
- 1 breakfast room set
- 1 child's swing

That at the time of surrender of premises plaintiff shall deliver his promissory note to the defendant for One Hundred Dollars (\$100.00) and same is to be made payable within six months.

It Is Further Ordered, Adjudged and Decreed that the plaintiff is to pay the sum of Fifty Dollars (\$50.00) per month for the support of the minor child, namely Helen Barbara Weiser, until the further order of the Court.

It Is Further Ordered, Adjudged and Decreed that the plaintiff is to pay the sum of Fifty Dollars (\$50.00) per month for the support of the defendant for a period of six months, effective this date, January 16, 1948.

Dated this 16th day of January, 1948.

/s/ A. J. MAESTRETTI,
District Judge.

State of Nevada,
County of Washoe—ss.

I, E. H. Beemer, County Clerk and ex-officio Clerk of the Second Judicial District Court of the State of Nevada, in and for Washoe County, said court being a court of record, having a common law jurisdiction, and a clerk and a seal, do hereby certify that the foregoing is a full, true and correct copy of the original, Findings of Fact, Conclusions of Law and Decree in Case No. 114334, Matthew W. Weiser, plaintiff, vs. Helen Anthony Weiser, defendant, which now remains on file and of record in my office at Reno, in said County.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, at Reno, this 19th day of January, A. D. 1948.

(Seal) E. H. BEEMER,
Clerk.

By /s/ M. DOWD,
Deputy.

[Endorsed]: Filed January 19, 1949.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,

District of Nevada—ss:

I, Amos P. Dickey, Clerk of the United States District Court for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of said United States District Court of the District of Nevada, including the records, papers and files in the case of Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, Plaintiff, vs. Mrs. Dorothy Ward Ginocchio, Defendant, said case being No. 675 on the civil docket of said Court.

I further certify that the attached record on appeal consisting of 159 pages numbered from 1½ to 158, inclusive, contains all of the original papers filed in this office in the above-entitled cause and also contains a certified copy of Civil Docket entry of January 20, 1949, which constitutes the entry of the Judgment.

I further certify that an Index is attached to this record on appeal identifying the papers herein.

Witness my hand and the seal of said United States District Court this 26th day of April, 1949.

(Seal)

AMOS P. DICKEY,

Clerk, U. S. District Court. [158]

[Endorsed]: No. 12234. United States Court of Appeals for the Ninth Circuit. Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, Appellant, vs. Mrs. Dorothy Ward Ginocchio, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Nevada.

Filed April 27, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12234

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Appellant,

vs.

MRS. DOROTHY WARD GINOCCHIO,

Appellee.

DOCUMENT ADOPTING STATEMENT OF
POINTS

To: Clerk of the Court of Appeals for the Ninth
Circuit.

Sir: Pursuant to subdivision 6 of Rule 19 of the
Rules of the United States Court of Appeals for the
Ninth Circuit, Tighe E. Woods, Housing Expediter,

appellant herein, adopts as his points on appeal, the statement of points previously filed in the District Court, and appearing in the transcript of record.

Respectfully submitted,

ED DUPREE,

General Counsel,

/s/ HUGO V. PRUCHA,

Assistant General Counsel,

/s/ NATHAN SIEGEL,

Special Litigation Attorney,

Office of the Housing Expediter, Office of the General Counsel, 4th and Adams Drive, S. W., Washington 25, D. C.

(Proof of Service attached.)

[Endorsed]: Filed May 11, 1949. Paul P. O'Brien, Clerk.